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No. _____

IN THE

Supreme Court of the United States

October Term, 1985

MICHAEL THOMAS ROSE,

Petitioner,

v.

THE SUPREME COURT OF
THE STATE OF COLORADO,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

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January 15, 1986

QUESTIONS PRESENTED

1. Was petitioner denied due process of law when the Colorado Supreme Court refused to correct its erroneous rejection of his application for admission to the bar, where that rejection was the outcome of a proceeding in which petitioner was affirmatively misled about the nature of the charges against him and deprived of an opportunity to rebut those charges, and in which a judge who was disqualified from participating in fact secretly urged his colleagues to deny the application, and where petitioner suffers continuing harm therefrom?

2. Did the Colorado Supreme Court deprive petitioner of his rights under the First Amendment when it permanently barred him from discussing the circumstances un-

derlying his denial of admission to the bar, even though misleading and derogatory information about those circumstances has been publicized by others, including the Chief Justice of this Court?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.....	(i)
TABLE OF AUTHORITIES.....	(v)
OPINIONS BELOW.....	2
JURISDICTION.....	3
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	4
STATEMENT OF THE CASE.....	4
REASONS FOR GRANTING THE WRIT.....	25
I. CERTIORARI SHOULD BE GRANTED TO REVIEW THE FAILURE OF THE COLORADO SUPREME COURT TO APPLY STANDARDS OF DUE PROCESS TO THE PROCEEDINGS REGARDING ROSE'S ADMISSION TO THE COLORADO BAR, AND TO HIS PETITION FOR RELIEF.....	28

TABLE OF CONTENTS (Continued)

		Page
II.	CERTIORARI SHOULD BE GRANTED BECAUSE THE SPECIAL MASTER'S ORDER AND THE OCTOBER 27, 1982, LETTER FROM THE COLORADO SUPREME COURT WHICH AFFIRMS IT ARE DIRECT, PRIOR RESTRAINTS UPON ROSE'S SPEECH, UNJUSTIFIED BY ANY CLEAR AND IMPENDING DANGER OR COMPETING GOVERNMENTAL INTEREST AND THEREFORE REPUGNANT TO THE CONSTITUTION.....	53
CONCLUSION.....		64

Table of Authorities

Cases	Page
Bernard v. Gulf Oil Company, 619 F.2d 459 (5th Cir. 1980), aff'd. on other grounds, 452 U.S. 89 (1981)	56,57, 58,59, 62,63
Board of Regents v. Roth, 408 U.S. 564 (1972)	26,29 30
Carroll v. President & Commissioners of Princess Anne, 393 U.S. 175 (1968)	63
CBS Inc. v. Young, 522 F.2d 234 (6th Cir. 1975)	63
Chase v. Robson, 435 F.2d 1059 (7th Cir. 1970)	62
Chicago Council of Lawyers v. Bauer, 522 F.2d 242 (7th Cir. 1975) cert. denied, 427 U.S. 912 (1976)	58,59
Codd v. Velger, 429 U.S. 624 (1977)	26,29 30
Craig v. Harney, 331 U.S. 367 (1947)	61,62

Cases	Page
Department of the Air Force v. Rose, 425 U.S. 352 (1976).....	7
District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983).....	3,4
Doe v. U.S. Department of Justice, 753 F.2d 1092 (D.C. Cir. 1985)...	26,29
Grayned v. City of Rockford, 408 U.S. 104 (1972).....	64
Hirschkop v. Snead, 594 F.2d 356 (4th Cir. 1979).....	59
In re Icardi, 436 Pa. 364, 260 A.2d 782 (1970).....	44,45
In re Mattox v. The Disciplinary Panel of the United States District Court, 758 F.2d 1362 (10th Cir. 1985).....	32,45
In re Monaghan, 126 Vt. 53, 222 A.2d 665 (1966).....	35
Nebraska Press Association v. Stuart, 427 U.S. 539 (1976)...	59,60
Near v. Minnesota, 283 U.S. 697 (1931).....	56,57
Organization for a Better Austin v. Keefe, 402 U.S. 415 (1971).....	60

Cases	Page
In re Admission of Rose, 50 U.S.L.W. 3714 (March 9, 1982)	2,5,6, 21,26
Seattle Times Co. v. Rhinehart, 467 U.S. 20 (1984)	61,63 64
Shelton v. Tucker, 364 U.S. 479 (1960)	63
Shuttlesworth v. Birmingham, 394 U.S. 147 (1969)	59
U.S. v. Columbia Broadcasting System, Inc., 497 F.2d 102 (5th Cir. 1974)	61
Village of Schaumberg v. Citizens for a Better Environment, 444 U.S. 620 (1980)	64
Waldo v. Lakeshore Estates, 433 F.Supp. 782 (E.D. La. 1977)	59
Walker v. Birmingham, 388 U.S. 307 (1967)	59
Willner v. Committee on Character and Fitness, 373 U.S. 96 (1963)	25,26, 31,32, 42,43, 44,45 50

Cases	Page
Wood v. Georgia, 370 U.S. 375 (1962)	61,62

Constitutional Provisions and Statutes	
U.S. CONST. amend I	4
U.S. CONST. amend V	4
U.S. CONST. amend XIV, § 1	4,29
28 U.S.C. § 1257(3) (1970)	3,4
Colo. R. Civ. P. 201	4,47, 55,56, 62
Colo. R. Civ. P. 201-220 and 222-225 (repealed December 1, 1982 and reenacted as Rule 201)	2,9, 20,33 47,55, 56,57

Other	
M. Rose, A Prayer for Relief: The Constitutional Infirmities of the Military Academies' Conduct, Honor and Ethics System (1973)	7

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

No. _____

MICHAEL T. ROSE,

Petitioner,

v.

THE SUPREME COURT OF THE STATE OF COLORADO,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

Petitioner Michael T. Rose ("Rose") respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Colorado, entered on October 17, 1985, which denied Rose's Petition for Relief.

OPINIONS BELOW

The 1976 Report of the Bar Committee Pursuant to Colo. R. Civ. P. Rule 212, recommending that Rose be denied admission to the Colorado Bar, is reproduced as Appendix C at 6a and is unreported. The 1977 Order of the Colorado Supreme Court, denying Rose Admission to the Colorado Bar, is reproduced as Appendix D at 14d and is unreported. The 1981 Master's Report, in which the Special Master recommended that Rose be admitted to the Colorado Bar is reproduced as Appendix E at 14a and is unreported. This Court's decision in In re Admission of Rose, 50 U.S.L.W. 3714 (March 9, 1982), is reproduced as Appendix S at 161a. The letter from David W. Brezina, Clerk of the Colorado Supreme Court (October 27, 1982), in which that court refused to rescind the rules and orders of confidentiality, is reproduced as Appendix B at 3a and is

unreported. The 1985 Order of the Colorado Supreme Court, denying in whole Rose's Petition for Relief (in which both the Due Process and the First Amendment arguments were first presented) is reproduced as Appendix A at 1a and is unreported.

JURISDICTION

The Order of the Colorado Supreme Court, denying Rose's Petition for Relief, was entered on October 17, 1985. (The Colorado Supreme Court has advised us that the exact time of entry of the order is unknown.) This Court has exclusive jurisdiction to review that Order pursuant to 28 U.S.C. § 1257(3) (1970). District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution is reproduced as Appendix DD at 286a. The Fifth Amendment to the United States Constitution is reproduced as Appendix Y at 245a. Section 1 of the Fourteenth Amendment to the United States Constitution is reproduced as Appendix Z at 246a. 28 U.S.C. § 1257(3) (1970) is reproduced as Appendix AA at 247a. Colo. R. Civ. P. 201 is reproduced as Appendix BB at 248a.

STATEMENT OF THE CASE

1. Summary. The United States Supreme Court has exclusive jurisdiction to review a final judicial decision of the highest court of a state in a case involving a particular applicant's admission to a state bar. Feldman, 460 U.S. 462 (1983).

The Colorado Supreme Court denied petitioner Michael T. Rose due process of law when it rejected his application for admission to the Colorado Bar in 1977 and when it rejected his petition for Relief in 1985. This rejection, and the erroneous findings upon which it was based, have caused and continue to cause Rose serious and irreparable injury to his personal and professional reputations. Certiorari should be granted to review the procedure by which the Colorado Supreme Court rejected Rose's application, and its refusal to correct the erroneous results of that Constitutional deprivation.

Rose's injuries are exacerbated by the Chief Justice's published dissent in In re Admission of Rose, 50 U.S.L.W. 3714. That dissent, which severely impugned Rose's character, was based upon the substantively erroneous and procedurally defective findings of the Colorado Supreme

Court. In a separate opinion, Justice Stevens warned that an applicant might well suffer "serious harm" as the result of an "ad hoc, ex parte evaluation of [his] character" conducted in the absence of a fair hearing. Id. (Stevens, J., concurring). Those words were prescient, for, as this petition shows, not only the Chief Justice's dissent but the Colorado Supreme Court's initial denial of admission were largely ex parte, were factually erroneous, and have caused petitioner considerable harm.

Rose is prohibited from commenting on the Colorado proceedings, and on the facts underlying the Chief Justice's dissent, by rulings of the Colorado Supreme Court. These rulings serve as a direct, prior and unconstitutional restraint upon Rose. Certiorari also should be granted to remedy this constitutional infraction and to

allow Rose to respond publicly to personal attacks upon his character.

Rose, a graduate of the United States Air Force Academy, has spent a considerable portion of his career attempting to redress legal infirmities in the adjudicatory systems of the military academies. He wrote a controversial book that questioned the administration of the academies' conduct, honor and ethics systems. M. Rose, A Prayer for Relief: The Constitutional Infirmities of the Military Academies' Conduct, Honor and Ethics Systems (1973). He has aired his criticisms on Sixty Minutes and other television programs. In addition, he prevailed in a seminal Freedom of Information Act lawsuit against the Air Force. Department of the Air Force v. Rose, 425 U.S. 352 (1976).

Rose believes that his criticism of the military academies prompted the Colorado proceedings. If Rose had been given

due process before he was denied admission, he would have been able to prove this.

As long as the adverse and unconstitutional Colorado findings stand, Rose cannot freely practice law, engage in business transactions, apply for a job, enter politics, make meaningful public statements or associate with individuals afraid of the stigma attached to him. By granting certiorari and reviewing the Colorado Supreme Court's actions, this injustice may be partially rectified and Rose can proceed with his life and his work.

2. Facts. In December, 1975, Rose applied for admission to the Colorado Bar. On December 3, 1976, the Bar Committee of the Colorado State Board of Law Examiners ("Committee") voted to recommend to the Colorado Supreme Court that Rose's application be rejected. Letter from Barnard

Houtchens to the Colorado Supreme Court (December 6, 1976), [hereinafter cited as "Houtchens's Letter"] at 32a (Appendix G). By report dated December 27, 1976, the Committee transmitted its findings and recommendation to the Colorado Supreme Court. Report of the Bar Committee Pursuant to C.R.C.P. Rule 212 [hereinafter cited as "Committee Report"] (Appendix C) at 6a. On January 6, 1977, the Colorado Supreme Court denied Rose admission. Order, In the Matter of the Application of Michael Thomas Rose for Admission to the Colorado Bar (January 6, 1977) (Appendix D) at 14a.

The Colorado Supreme Court violated fundamental principles of due process when it denied Rose admission to the Colorado Bar. It did not notify Rose -- either orally or in writing -- of the charges upon which his admission was denied until after his application was rejected. Even

more critically, the Committee falsely informed Rose that it was not considering particular charges which it later used as grounds to deny him admission. Reporter's Transcript of April 30, 1976, Hearing, at 82a [hereinafter cited as "April 30 Transcript"] (Appendix H); Reporter's Transcript of June 4, 1976, Hearing, at 99a [hereinafter cited as "June 4 Transcript"] (Appendix I). Indeed, on numerous occasions during the hearings, the Committee members themselves were confused as to the nature of the charges against Rose. April 30 Transcript at 75a, 82a (Appendix H).

On December 3, 1976, six members of the Committee voted five to one to deny Rose admission. Houtchens's Letter at 33a

(Appendix G). Before the vote, "hearings" 1/ in which Rose participated were held on April 30, 1976, and June 4, 1976. April 30 Transcript (Appendix H) at at 34a; June 4 Transcript (Appendix I) at 88a. Of the five Committee members who voted against Rose, one member did not attend either hearing and two other members did not attend the June 4, 1976, hearing. Compare April 30 Transcript at 34a (Appendix H), and June 4 Transcript (Appendix I) at 88a, with Houtchens's Letter at 32a (Appendix G). These committee members could not have reviewed transcripts of the testimony they had missed, including Rose's testimony, because the

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[1]Committee members variously characterized these "hearings" as an "interview," April 30 Transcript (Appendix H) at 87a, and as a "meeting." June 4 Transcript (Appendix I) at 89a.

transcripts were not prepared until after Rose was denied admission. Houtchens's Letter at 33a (Appendix G). Nevertheless, these three members voted to reject Rose's application.

The Committee did not disclose to Rose critical evidence used against him; this denied Rose the right to confront and rebut this evidence. The Committee also never produced, and never gave Rose the opportunity to confront, those individuals upon whose accusations the Colorado Supreme Court denied him admission; this denied Rose the right to confront and cross-examine his accusers.

In recommending to the Colorado Supreme Court that Rose be denied admission, the Committee stated that it had relied, among other sources, upon a letter dated September 24, 1976, from Richard F. Hennessey to the Colorado Board of Law Examiners [hereinafter cited as the "Hennessey

Report"] (Appendix J) at 109a and the report of Committee member, Roger Cisneros, Committee Report at 7a (Appendix C). Report by Roger Cisneros to Bar Committee (Appendix K) at 125a. Cisneros had attended both hearings, had investigated Rose for the Committee, and had recommended to the Committee -- and had voted -- that Rose be admitted to the Bar. Id. at 126a (Appendix K).

The Hennessey Report, in contrast, was issued on September 24, 1976, over three months after the last hearing. Although Hennessey interviewed numerous individuals who had a motive to malign Rose, he never interviewed Rose or any one of a number of people who would speak on his behalf. Based on this one-sided investigation, Hennessey concluded that Rose was guilty of misconduct; yet Rose was never charged with the misconduct that Hennessey alleged. Moreover, the

individuals Hennessey interviewed were never produced for confrontation or cross-examination by the Committee or by Rose. Rose never had an opportunity to confront and rebut their statements. He did not know that the Hennessey Report existed -- he did not know that Hennessey was even investigating him -- until after his application was rejected. Notwithstanding these due process inadequacies, after Rose was denied admission, Colorado Supreme Court Justice Groves informed Rose that the Hennessey Report was "what sank" him. Affidavit of Michael T. Rose, ¶3 [hereinafter cited as "Rose Affidavit"] (Appendix L) at 127a.[2]/

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[2] The Rose Affidavit and all other material relied upon here were filed with the Colorado Supreme Court as attachments to Rose's Petition for Relief.

Justice Groves formally disqualified himself from voting on Rose's application because he had served as liaison between the Committee and the Colorado Supreme Court, and in this capacity had heard numerous ex parte allegations against Rose and had had ex parte communications about Rose with Air Force officials. Nevertheless, in two "Personal and Confidential" memoranda, Justice Groves urged the other Justices of the Colorado Supreme Court to deny Rose admission. Memoranda from Justice Groves to the Colorado Supreme Court (December 8, 1976, and January 5, 1977) (Appendix M) at 133a. There is no telling what effect Justice Groves' improper ex parte communications had on the court.

Justice Groves also circulated confidential information about the Colorado proceedings to Rose's adversaries. For example, he provided a United States Congressman with "more [information about

Rose] than we generally disclose without the permission of the applicant." Letter from Justice Groves to Congressman Wilson (October 26, 1977) (Appendix CC) at 284a. Although Justice Groves requested that the Congressman "treat [the information] as rather privileged," Justice Groves himself kept a "mailing list" on which he offered to place Congressman Wilson and an unknown number of other persons, and to whom he sent information about "the future of . . . Rose." Id. at 284a.

On October 27, 1978, Rose applied for admission to this Court's Bar. The then Clerk, Michael Rodak, Jr., requested the Colorado Supreme Court to provide this Court with information about Rose. Letter from Michael Rodak, Jr. to Justice Groves (January 22, 1979) [hereinafter cited as "Rodak's letter"] (Appendix N) at 135a. Rodak's letter closed with this assurance: "Any such information will be . . . held

in the strictest confidence." (Emphasis supplied).

Justice Groves forwarded Rodak's letter to Rose and asked him to authorize the Colorado Supreme Court to release his file to this Court. Letter from Justice Groves to Rose (March 5, 1979) [hereinafter cited as "Groves letter"] (Appendix O) at 138a. Rose, relying upon Rodak's written assurance of confidentiality, consented.

Justice Groves supplied the United States Supreme Court with only information which damaged Rose; he purposely excluded the numerous letters and affidavits favorable to him. Letter from Justice Groves to Michael Rodak, Jr. (April 17, 1979) (Appendix P) at 141a. On November 27, 1978, this Court informed Rose that his application would be held in abeyance pending action on his reapplication to the Colorado Bar. Letter from Michael Rodak,

Jr. to Rose (November 27, 1978). (Appendix Q) at 150a.

On December 1, 1978, Rose reapplied for admission to the Colorado Bar. In approximately May, 1979, a Disciplinary Prosecutor was appointed to investigate Rose, new allegations were made against him, and a second Disciplinary Prosecutor was appointed to prosecute those allegations.

The new allegations against Rose were based largely upon an extensive, secret, ex parte file of information and allegations provided to the Disciplinary Prosecutor by Justice Groves. Affidavit of Jordon Hochstadt and Richard Strauss, ¶¶6-7 [hereinafter cited as "Hochstadt and Strauss Affidavit"] (Appendix R) at 152a. A Special Master, who was appointed by the Colorado Supreme Court to hear the allegations, denied Rose's request to be supplied a copy of this file. The Special

Master stated that Justice Groves had directed him to deny the request. Id. at ¶¶8-10 (Appendix R). Thus, Rose was required to defend himself without the benefit of the file used against him by the Disciplinary Prosecutor.

In January, 1980, Rose requested that the Colorado proceedings remain confidential so that the unproven factual allegations made there could not be used against him in unrelated proceedings. 3/ Hochstadt and Strauss Affidavit ¶¶11-12 (Appendix R) at 157a. The Special Master granted Rose's request on January 21, 1980. Order No. 2 of Special Master [hereinafter cited as "Special Master's Order"] (Appendix F) at 30a. The Order read, in pertinent part:

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[3]This concern was warranted. The Special Master found these new allegations

(Footnote Continued)

. . . I find and order that:

> a. Rule 216, C.R.C.P., is applicable to these proceedings, except that such disclosures as may be reasonably necessary in order to prepare for hearing, are allowed.
>
> * * *
>
> c. Parties and counsel will conduct themselves accordingly.

Colo. R. Civ. P. 216 (repealed effective December 1, 1982), which was in effect when Rose re-applied to the Colorado bar, provided that "all such information [relating to the applicant's ethical or moral qualifications] shall be held confidential by the Committee and the Court unless in the opinion of the Court its disclosure becomes necessary in a hearing on the application" [emphasis added].

(Footnote Continued)
to be groundless. Master's Report (Appendix E).

A hearing on Rose's reapplication was held on February 16, 17 and 18, 1981. On May 8, 1981, the Special Master concluded that Rose was morally and ethically qualified to practice law and recommended that he be admitted to the Colorado Bar. Master's Report (Appendix E) at 14a. The Special Master expressly ruled that it was not within his jurisdiction to consider the Committee's original findings and recommendation. Id. at 16a. On May 22, 1981, Rose was admitted.

Rose next petitioned this Court to reconsider his application. In a seven to two vote, this Court approved Rose's admission to the bar on March 8, 1982. However, the information which Rose released to this Court -- and which he had been assured would be "held in the strictest confidence" -- was published by the Chief Justice in his dissent to the majority opinion. In re Admission of Rose, 50

U.S.L.W. 3714. The Chief Justice's dissent was reported in the Washington Post, the New York Times, the National Law Journal, the Denver Post, and other publications (Appendix T) at 167a. Additionally, if the name "Michael T. Rose" is searched in LEXIS, the dissent will be retrieved.

The widespread dissemination of the Chief Justice's dissent -- and the misleading and confidential information it contained -- have caused Rose serious professional damage. Because of the Chief Justice's dissent and the Colorado proceedings on which it was premised, Rose has been denied jobs and has lost clients, Rose Affidavit, ¶4 (Appendix L) at 127a, Affidavit of Col. Donald C. Odegard, Jr. (Appendix U) at 198a; his personal relationships and his professional reputation have been severely damaged, Rose Affidavit, ¶4 (Appendix L); his applications

to the Bars of two states have been stalled indefinitely, Id., ¶4-F at 131a; and he faces the prospect of confronting the Chief Justice's dissent anew -- and in silence -- in virtually every case in which he is involved. See, e.g., Respondents' Memorandum in Opposition to Michael T. Rose's Motion for "Partial Summary Judgment" (Appendix V) at 206a; Rose Affidavit (Appendix L) at 126a.

As long as the Special Master's Order remains in effect, Rose cannot respond to the charges in the Chief Justice's dissent; nor can he fully answer the questions which the media ask him concerning the subject. Seeking to unloose these restraints, Rose filed in the Colorado Supreme Court a Motion to Withdraw Rules and Orders of Confidentiality. Motion to Withdraw Rules and Orders of Confidentiality, In re the Application of Michael T. Rose for Admission to the Bar of the State

of Colorado (October 18, 1982) (Appendix W) at 235a. On October 27, 1982, the Colorado Supreme Court advised Rose that he could comment publicly only on the documents which Justice Groves had forwarded to this Court. As to all other documents and matters -- including the letters and documents which were favorable to Rose -- the Court refused to "grant permission to waive the rules and orders of confidentiality." Letter from David W. Brezina, Clerk of the Colorado Supreme Court, to Rose (October 27, 1982) (Appendix B) at 4a. As Brezina's letter makes clear, the Colorado Supreme Court interpreted the Special Master's Order to apply to Rose as forcefully as it applied to the court and counsel. The Colorado Supreme Court's refusal to rescind these rulings was reiterated on October 17, 1985, when that court denied Rose's Petition for Relief. Order of Court, In

re the Application of Michael T. Rose for Admission to the Bar of the State of Colorado (October 17, 1985) (Appendix A) at 1a.

REASONS FOR GRANTING THE WRIT

This case raises important issues regarding admissions proceedings to state bars. The first involves the due process requirements of such proceedings. This Court has held that a state may not deny an applicant admission to its bar on grounds of poor moral character without first affording the applicant due process under the Fifth and Fourteenth Amendments to the United States Constitution. Willner v. Committee on Character and Fitness, 373 U.S. 96, 102-05 (1963). Willner stands for the proposition that the right to confront, rebut, and cross-examine is central to the notion of due process; however, this Court has never since applied Willner's precepts to the factual

setting from which they arose -- state bar admissions proceedings. Moreover, in In re Admission of Rose, 50 U.S.L.W. 3714, the Chief Justice premised his dissent on factually incorrect state court findings based on proceedings which violated procedural due process. Certiorari should be granted to review, in light of Willner, the procedures the Colorado Supreme Court employed in 1977 to deny Rose admission to the state bar.

This Court has also held that when the government takes action that stigmatizes an individual, the Due Process Clause minimally entitles the individual to an opportunity to clear his or her name. Board of Regents v. Roth, 408 U.S. 564, 573 & n.12 (1972); Codd v. Velger, 429 U.S. 624, 627 (1977); Doe v. U.S. Department of Justice, 753 F.2d 1092, 1102-03 (D.C. Cir. 1985). Certiorari should be granted to review the Colorado

Supreme Court's refusal to provide such an opportunity to petitioner.

The final issue is of immediate concern to Rose. Rulings of the Colorado Supreme Court prohibit him from publicly commenting on his case. This is a direct, prior and unconstitutional restraint upon Rose. Individuals who disagree with Rose continually use the Colorado proceedings to question his credibility. For example, on March 16, 1985, Senator Barry Goldwater, a member of the Air Force Academy Board of Visitors, characterized Rose as one "who went to law school and who was not admitted to the Colorado Bar on his initial try. . . ." Affidavit of Robert C. Moore, ¶4. (Appendix X) at 242a. Moreover, the Public Information Office at the United States Air Force Academy has disseminated information about the Colorado proceedings to the media in a deliberate attempt to undermine Rose's

integrity. Id. at ¶5. The rulings of the Colorado Supreme Court prohibit Rose from responding to these attacks. Whether or not one agrees with Rose's views, he is still entitled to present them. Certiorari should be granted to review these rulings and return to Rose his First Amendment rights.

I. CERTIORARI SHOULD BE GRANTED TO REVIEW THE FAILURE OF THE COLORADO SUPREME COURT TO APPLY STANDARDS OF DUE PROCESS TO THE PROCEEDINGS REGARDING ROSE'S ADMISSION TO THE COLORADO BAR, AND TO HIS PETITION FOR RELIEF.

1. Rose was denied due process when the Colorado Supreme Court rejected his petition to clear his name.

When an individual claims that his reputation has been unfairly besmirched by governmental action, "the remedy mandated by the Due Process Clause of the

Fourteenth Amendment is 'an opportunity to refute the charge.' [Board of Regents v. Roth,] 408 U.S. [564], at 573. 'The purpose of such notice and hearing is to provide the person an opportunity to clear his name,' id., at 573 n.12." Codd v. Velger, 429 U.S. 624, 627 (1977). See also Doe v. U.S. Department of Justice, 753 F.2d 1092, 1102-03 (D.C. Cir. 1985).

As is demonstrated in this petition, the Colorado Supreme Court unfairly and inaccurately stigmatized Rose when it denied his application for admission to the state bar in 1977. After Rose became fully aware of the circumstances of those 1977 proceedings, and of the continuing injury to his reputation that was occurring despite his later admission to the state bar -- particularly because of the publication of false and damaging information from those proceedings in the Chief Justice's dissent -- he petitioned the

Colorado Supreme Court for name-clearing relief. That court summarily denied his petition, without any statement of reasons. In re the Application of Michael T. Rose for Admission to the Bar of the State of Colorado (Appendix A) at 1a. The Due Process Clause required that Rose's Petition for Relief be granted, at least to the extent of providing him with the "name-clearing hearing" contemplated by Roth and Codd.

2. Rose was denied due process because he was not informed, until after his application was rejected, of the charges against him and upon which he was to be denied admission. In fact, the Committee affirmatively misled Rose about these charges.

A state must notify an applicant of the specific charges against him and upon which it proposes to deny the applicant

admission. Willner, 373 U.S. at 105. The applicant must be notified before a final decision is made, so he has a meaningful opportunity to refute the specific charges. Id.

In Willner, this Court held that mere notification of the general matters under consideration, as opposed to notification of the specific charges, does not constitute due process:

> There seems no question but that petitioner was apprised of the matters the Committee was considering. 'But a "full hearing" -- a fair and open hearing -- requires more than that. . . . Those who are brought into contest with . . . Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command.' [Citation omitted]. Petitioner had no opportunity to ascertain and contest the bases of the Committee's reports to the Appellate Division, and the Appellate Division gave him no separate hearing. Yet, '[t]he requirements of fairness are not

> exhausted in the taking or consideration of evidence but extend to the concluding parts of the procedure as well as to the beginning and intermediate steps.' [Citations omitted].

Willner, 373 U.S. at 105 (emphasis added). See also In re Mattox v. The Disciplinary Panel of the United States District Court, 758 F.2d 1362 (10th Cir. 1985). The Colorado Supreme Court failed to provide Rose with the process that was due. Only after Rose was denied admission was he notified of the grounds upon which his application was rejected. He was never given an opportunity to refute those grounds.

In recommending that Rose's application be rejected, the Committee concluded that Rose had:

> Engaged in a pattern of conduct evidencing: [1] irresponsibility in professional matters in that he was suspended from the Bar of Pennsylvania, for a period of over two years, for his failure to comply with the Pennsylvania Supreme Court's attorney registration rule and misrepresenting his status in this

> regard on his application to the Bar of Colorado; [2] continued lack of candor in business and professional matters concerning his not being a member of the Bar of Colorado; [3] continued violation of reasonable rules of conduct in his capacity as a law clerk and in work on legal matters in his association with a Colorado law firm. Such conduct is inconsistent with the standards set forth in C.R.C.P. Rule 212.

Committee Report at 12a (Appendix C). In its Findings, the Committee also raised "the impropriety of . . . a solicitation" of business by Rose. Id. at 11a.

As its first ground for recommending that Rose be denied admission, the Committee concluded that he was suspended from the Pennsylvania Bar for failing to renew his annual registration. Committee Report at 7a, 12a (Appendix C). The Committee further found that Rose had misrepresented this fact on his application to the Colorado Bar. Id.

Rose was never notified that the Committee was considering matters related to the Pennsylvania Bar. Not one word was stated during either hearing about this issue. To this day it is a mystery as to how and when this issue was raised. If Rose had been informed that this was a charge, he would have shown that he had never lived or practiced law in Pennsylvania; was unaware that he was required annually to complete a registration form; was unaware of his suspension and believed, and had no reason to disbelieve, that he was a member in good standing of the Pennsylvania Bar; and was reinstated immediately from his temporary suspension merely by submitting a completed form, without paying any fee. Rose Affidavit,

¶5 (Appendix L) at 132a. 4/ Because Rose was given no opportunity to respond, the Committee concluded that he was guilty of misrepresentation.

The Committee's findings and conclusion on the Pennsylvania Bar issue illustrate the injustice that results when due process is denied. E.g., In re Monaghan, 126 Vt. 53, 222 A.2d 665 at 670 (1966) ("Where any fact or evidence adverse to an applicant is uncovered, he cannot be denied sufficient knowledge of what it is and an opportunity to rebut or explain it.").

The Committee also concluded that Rose had violated reasonable rules of

---

[4]Rose took the Pennsylvania Bar exam while stationed at McGuire Air Force Base, New Jersey. He took this exam to qualify as an Air Force legal officer, which required that Rose be a member of any state bar.

conduct as a law clerk for a Denver law firm. Committee Report at 13a (Appendix C). Once again, Rose was not notified until after his application was rejected that he might be denied admission based upon this charge. In fact, Rose was misled into believing that this was not a charge. This prevented him from presenting evidence rebutting it.

The hearing transcripts prove that Rose was led to believe that any dispute he had with the Denver law firm would not be considered a basis for denying him admission. During the hearing, Cisneros stated:

> Well, . . . unless other members of the Committee think differently, the things that have occurred since the hearing last time, to me, are relevant to the issue at hand. You know, there appears to be some controversy, but I think it should be handled some other way by some other committee, other than this one.

June 4 Transcript at 99a (emphasis added) (Appendix I). The colloquy continued:

> ROSE: . . . Now, if you consider it irrelevant, then, that is just fine with me, but I was afraid that you might not consider it irrelevant. . . .
>
> [Committee Member] KRAMER: Well, I think, from my point, so much of this . . . is a dispute between . . . lawyers, is not significant to our responsibility, unless it does involve some actual indication of a lack of integrity or dishonesty.

Id. at 100a. Later in the hearing, Kramer responded to one suggestion that Rose had acted improperly at his law firm:

> [Committee Member] KRAMER: Let's knock that off, because, Glenn, we are talking about hearsay, for one thing, and any recriminations between Rose and Mr. Snider are no business of ours. We don't care about it.

Id. at 105a (emphasis added).

These transcripts show that Rose was not notified that he might be denied admission because of alleged misconduct as a law clerk. In fact, the transcripts prove

otherwise -- that Rose was led to believe that this issue was not the basis for a charge. Nevertheless, in violation of due process, Rose was denied admission on this ground.

The Committee also suggested that Rose may have improperly solicited legal business. Committee Report at 11a (Appendix C). However, Committee member Barnard Houtchens specifically had informed Rose that this was not a charge against him. April 30 Transcript at 82a (Appendix H). Once again, this charge surfaced after the hearings, denying Rose an opportunity to rebut it.

The transcripts show that Rose was not notified of the charges against him. They prove that the Committee members themselves were unsure of the nature of the charges. The following excerpts manifest this confusion.

[Committee Member] HILL: I don't feel sufficiently advised as to the complaint here to be sure that I know what is covered. Apparently one is holding himself out as an attorney. Is there . . . [another for] soliciting business? What are they? If you'd tell me just, if you can, briefly the charges here that we're considering.

* * *

ROSE: I don't believe, sir, that those letters really indicate what the charges are.

[Committee Member] CISNEROS: I think maybe you have a copy of a letter from Justice Groves dated April 22nd, 1976, which is addressed to Rose and the essential part of it, the reason it says for his requested appearance is that 'The Bar Committee is further investigating your ethical and moral qualifications for admission to the Bar in light of your letter to the Bar' which is the letter we quoted, and of Captain Michael R. Watts Affidavit dated June 6, 1975.

[Committee Member] HILL: Then the charges here . . . relates to holding himself out as a lawyer in this letter, but he admitted he was practicing law in Colorado by that letter and that he apparently acted as counsel in some case for a serviceman.

> [Committee Member] CISNEROS: I don't think this has anything to do with practicing law because I think you don't have to be a lawyer to --
>
> [Committee Member] HILL: I wondered about that.

April 30 Transcript at 75a (Appendix H).

The following colloquy transpired later in the hearing:

> [Committee Member] MR. HILL: Is there some charge here of soliciting business too? Is that one of the inferences?
>
> * * *
>
> [Committee Member] HOUTCHENS: You might have inferred it, but there isn't any charge like that.
>
> [Committee Member] HILL: So the real question that we're to decide is do we think that there was a representation that he was a practicing lawyer and was admitted to practice in Colorado?
>
> [Committee Member] HOUTCHENS: Unauthorized practice of law.
>
> [Committee Member] CISNEROS: Right.

> [Committee Member] HILL: He engaged in unauthorized practice of law in Colorado?
>
> [Committee Member] CISNEROS: This is my thought.
>
> [Committee Member] HILL: Is that the issue?
>
> [Committee Member] HOUTCHENS: Of course, the issue is whether or not, if he actually was, then does that result in his being unfit to practice law in Colorado . . . and what would we recommend with respect to his admission to the Court.
>
> [Committee Member] HILL: All right.

Id. at 82a (emphasis added).

Thus, Rose was never informed of any of the charges against him upon which the Committee denied his application. To the contrary, Rose was misinformed of the charges.

In sum, the failure to inform Rose, until after his application was rejected, of the specific charges against him and upon which he was to be denied admission,

violated due process. Willner, 373 U.S. at 105.

3. Rose was denied the fair hearing required by due process.

Rose was entitled to a fair hearing to rebut the specific charges against him. Willner, 373 U.S. at 105.

Rose was denied this right in several respects. For example, a majority of the Committee members who voted to reject Rose's application failed to hear or to review all of the evidence, including some or all of Rose's testimony. Compare April 30 Transcript (Appendix H) at 34a and June 4 Transcript (Appendix I) at 88a with "Houtchens's Letter" (Appendix G) at 32a. Indeed, one such member failed to hear or review any testimony at all, including any of Rose's testimony. Under these circumstances, to assert that the full hearing requirement of due process was satisfied merely because two

"hearings" were held elevates form over substance and makes a mockery of this essential constitutional guarantee.

Rose was denied a fair hearing in other respects. He was entitled to confront and cross-examine his accusers, including the authors of the ex parte statements and documents upon which the Committee based its recommendation that his application be rejected. Willner, 373 U.S. at 105-106. It directly follows from the right of confrontation and cross-examination that an applicant may not be denied admission based on ex parte evidence. Willner, 373 U.S. at 105-106. Due process precludes the use of such evidence because the tribunal cannot judge the credibility and demeanor of their authors; the applicant cannot confront and cross-examine them; nor can the applicant review and rebut the contents of their statements and documents.

In concluding that due process barred the use of ex parte evidence to deny an applicant admission, this Court has held that where a state "did in fact rely on [ex parte evidence], at least to some extent, in reaching its determinations." Willner, 373 U.S. at 106 (emphasis added), its decision must be reversed. Id.

The constitutional shortcomings of the use of ex parte evidence to deny Rose admission would not have been rectified even if Rose had been given an opportunity at the two hearings "to rebut the general import of the accusations contained in . . . [the] ex parte statements and documents." In re Icardi, 436 Pa. 364, 260 A.2d 782 at 784 (1970). As the Pennsylvania Supreme Court has stated:

> An examination of the records of the hearings . . . makes it perfectly clear that those bodies relied, as did the Committee in Willner, on ex parte statements and documents gathered in their investigations.

> It is true that . . . [the applicant] had ample opportunity to offer evidence, which he did, to rebut the general import of the accusations contained in those ex parte statements and documents. He was never, however, given the opportunity of confronting and cross-examining the authors or makers of the various documents and statements which the Boards concluded overcame the prima facie evidence of good moral character presented by him. That failure deprived . . . [the applicant] of the procedural due process to which he was entitled and requires a reversal in order that his application may be considered in the light of the standards mandated by Willner.

Id. (emphasis added). See also In re Mattox, supra, 758 F.2d 1362.

Here, likewise, the Committee received various ex parte complaints against Rose. For example, Captain Michael R. Watts, United States Air Force, alleged in an affidavit that Rose gave him the "impression" that he was an attorney engaging in the unauthorized practice of law. Hennessey Report at 112a (Appendix J).

Also, Lieutenant Colonel Wayne E. Robinson, United States Air Force, alleged in an April 26, 1976, letter to the Committee that Rose was holding himself out as a Colorado attorney. Id.

These examples of ex parte documents are critical for at least two reasons. First, the Committee concluded that Rose continually lacked candor in representing his status as a member of the Colorado Bar. Committee Report at 13a (Appendix C). Second, officers of the United States Air Force had been in an adversarial relationship with Rose and had ample incentive to malign him. The Committee was required to produce Captain Watts, Lieutenant Colonel Robinson, and the authors of the other ex parte complaints,

and to permit Rose to confront and to cross-examine them. It did not do so. 5/

The Hennessey Report was the most damaging of the ex parte documents. The Committee expressly relied upon it in concluding that Rose should be denied admission. Committee Report at 7a (Appendix C).

Incredibly, Hennessey interviewed only individuals who had a motive to malign Rose. (Appendix J) at 109a. He never interviewed Rose or any of the people who would speak on his behalf. Because Hennessey's investigation was covert, neither the Committee nor Rose was

---

[5] Colo. R. Civ. P. 201-220 and 222-225, which were in effect when Rose was denied admission, did not provide expressly for the use of subpoena power to require the attendance of complaining witnesses. Colo. R. Civ. P. 201.10 (effective December 1, 1982) now expressly grants the Bar Committee this power.

given the opportunity to confront or cross-examine the witnesses whose testimony convinced Hennessey that Rose was guilty.

Rose was never charged with, nor was he given an opportunity to rebut, the accusations of misconduct which the Hennessey Report made against him. For example, the Report accused Rose of improperly soliciting legal business. Hennessey Report at 123a (Appendix J). As discussed above, the Committee previously had informed Rose that this was not a charge against him. April 30 Transcript at 82a (Appendix H). The Hennessey Report raised other new charges, including a complaint against Rose received on July 29, 1976, after both hearings had ended. Hennessey Report at 109a (Appendix J).

To make matters worse, the Hennessey Report was issued on September 24, 1976, over three months after the last hearing.

Rose did not know that Hennessey was investigating him; he was never confronted with the Hennessey Report; nor was he ever given an opportunity to rebut its devastating and apparently dispositive conclusions.

Colorado's reliance on the Hennessey Report was antithetical to every fundamental notion of due process. Nevertheless, after Rose was denied admission, Justice Groves informed him that the Hennessey Report was "what sank" him. Rose Affidavit at ¶3 (Appendix L) at 127a.

Apparently, Justice Groves was correct. The Hennessey Report had great impact on the Committee. On both September 24, 1976, and December 3, 1976, the Committee met with Hennessey and discussed his report "at length." Houtchens's Letter at 33a (Appendix G). Rose did not attend these meetings; he was not invited to them; he was not even informed that

they would be held. He therefore could not address the new issues which that report raised.

Yet, although Rose was not there to speak on his own behalf, the Committee members who were absent from the April 30 or June 4 hearings did attend one or both of the meetings with Hennessey. Id. at 32a. Thus, the three members who had not heard Rose's full testimony heard Hennessey's unchallenged accusations against him. These three members voted against Rose. Not only was this pattern of ex parte proceedings patently unfair, it denied Rose due process. E.g. Willner, 373 U.S. at 105-06.

4. The late Justice James K. Groves, who was disqualified from voting on Mr. Rose's application, nevertheless urged the Colorado Supreme Court to reject his application.

Justice Groves was disqualified from voting on Rose's application because he served as the "liaison between the [Colorado Supreme Court] and the Bar Committee". Memorandum from Justice Groves to the Colorado Supreme Court (December 8, 1976) (Appendix M) at 133a. As liaison, Justice Groves had reviewed, ex parte, numerous derogatory documents about Rose, and had heard, ex parte, numerous damaging hearsay allegations against him. Id. Nevertheless, he may have improperly prejudiced the Colorado Supreme Court before it voted to deny Rose admission.

Justice Groves urged his colleagues on the Court to reject Rose's application. "For whatever, if anything, my dis-

qualified recommendation may mean, I think that we should adopt the majority recommendation of the . . . Committee." Id. (emphasis added). The Colorado Supreme Court may have attached significant weight to Justice Groves' "disqualified recommendation," Id., because he was in charge of all Colorado bar admissions and disbarment matters.

Justice Groves acknowledged the conflict inherent in acting as liaison between the Committee and the Colorado Supreme Court and subsequently voting on Rose's application. Yet, despite this very real conflict, Justice Groves lobbied his colleagues on the Colorado Supreme Court to deny Rose admission. This further tainted the decision-making process.

II. CERTIORARI SHOULD BE GRANTED BECAUSE THE SPECIAL MASTER'S ORDER AND THE OCTOBER 27, 1982, LETTER FROM THE COLORADO SUPREME COURT WHICH AFFIRMS IT ARE DIRECT, PRIOR RESTRAINTS UPON ROSE'S SPEECH, UNJUSTIFIED BY ANY CLEAR AND IMPENDING DANGER OR COMPETING GOVERNMENTAL INTEREST AND THEREFORE REPUGNANT TO THE CONSTITUTION.

Having denied Rose an opportunity to address, within court, the charges made against him, the Colorado Supreme Court now denies Rose the right to rebut these false charges in the court of public opinion.

Two points require emphasis. First, little, if anything, about the reasons for rejecting Rose's application remains confidential. What does remain confidential is the evidence favorable to Rose and the

unfair manner in which he was treated. Despite this Court's written assurance of confidentiality, the allegations against Rose which were developed in the Colorado proceedings have been widely disseminated. The Chief Justice's dissent, which repeats those allegations, is accessible to anyone who searches "Michael T. Rose" in LEXIS. In addition, Colorado Supreme Court Justice Groves maintained a "mailing list" of people to whom he sent information about Rose. Letter from Justice Groves to Congressman Wilson (October 26, 1977) (Appendix CC) at 284a. To United States Congressman Charles H. Wilson, Justice Groves sent "more [information about Rose] than we generally disclose without the permission of the applicant." Id.

Second, Rose is in an untenable position. The Colorado Supreme Court's rules and orders of confidentiality did not prevent information adverse to him from

being circulated. Nevertheless, these same rules and orders prevent him from responding to inquiries resulting from the publication of the damaging information. This is patently unfair, especially because these rules and orders exist to protect, rather than harm, the applicant. In fact, Colo. R. Civ. P. 201.10(c) now provides that the hearing "shall be public unless the applicant shall request that the hearing be confidential." Indeed, the Special Master's Order was issued only at Rose's request and for Rose's protection. Hochstadt and Strauss Affidavit, at 157a (Appendix R).

The rulings which prohibit Rose from commenting on the Colorado proceedings are a direct, prior restraint on Rose. Although, by its terms, Colo. R. Civ. P. 216, which these rulings incorporate, requires only that the court and counsel keep these proceedings confidential, the

Special Master's Order and the October 27, 1982, letter from the Colorado Supreme Court which affirmed that Order extend this rule to apply to Rose. 6/ (Appendices F at 30a and B at 3a). The Fifth Circuit, in Bernard v. Gulf Oil Company, 619 F.2d 459 (5th Cir. 1980), aff'd on other grounds, 452 U.S. 89 (1981), listed four distinct features of a prior restraint. The orders which muzzle Rose exhibit these features in terms as stark, or even more stark, than were before that court.

First, "a prior restraint is generally judicial rather than legislative in origin," 619 F.2d at 467, citing Near v. Minnesota, 283 U.S. 697 (1931). Here, the

---

[6]Colo. R. Civ. P. Rules 201 through 220 and Rules 222 through 225 were repealed and were reenacted as Rule 201 by the Colorado Supreme Court November 10, 1982, effective December 1, 1982.

Special Master's Order is undeniably judicial in origin.

Second, "[i]t has been suggested that the sole purpose of a prior restraint is suppression rather than punishment," 619 F.2d at 468. The Bernard ccurt observed that criminal statutes provide for punishment by their terms; a prior restraint "'provides for no punishment, except in case of contempt for violation of the court's order.'" Id., citing Near, 283 U.S. at 715. Such is the case here. The Special Master's Order, the October 27, 1982, letter from the Colorado Supreme Court refusing to rescind that Order, and Colo. R. Civ. P. 216 all restrain communication without explicitly providing for punishment. (Appendices F at 30a and B at 3a).

Third, "'punishment by contempt is an important attribute of a prior restraint. . . .,'" 619 F.2d at 468, citing

Chicago Council of Lawyers v. Bauer, 522 F.2d 242, 248 (7th Cir. 1975) cert. denied, 427 U.S. 912 (1976). A contempt order, the Bernard court reasoned, "is both more swiftly imposed and less subject to the criminal safeguards of the criminal justice system than is the punishment for violation of a statute." (citations omitted) 619 F.2d at 468. Here, the text of the Special Master's Order, and that of the Rule upon which the Order is based, are silent as to punishment. Undoubtedly, one available means of enforcement is the court's contempt power and, undoubtedly, it is that threat of contempt which silences Rose.

Finally, the means for challenging a prior restraint are much narrower than those of challenging a criminal statute:

> While the unconstitutionality of a statute may be raised as a defense to prosecution for its violation, a litigant who disobeys an injunction is precluded

> from raising its constitutional invalidity as a defense in contempt proceedings.

619 F.2d 469, citing Shuttlesworth v. Birmingham, 394 U.S. 147 (1969) and Walker v. Birmingham, 388 U.S. 307 (1967). Some courts regard this requirement as the lynchpin of prior restraint. See, e.g., Hirschkop v. Snead, 594 F.2d 356, 368 (4th Cir. 1979); Chicago Council of Lawyers v. Bauer, 522 F.2d 242, 248; Waldo v. Lakeshore Estates, 433 F.Supp. 782, 788 (E.D. La. 1977).

This requirement is met here. The Special Master's Order is a judicial order which must be obeyed even as it is appealed. As a prior restraint, it has "an immediate and irreversible sanction. If it can be said that a threat of criminal or civil sanctions after publication 'chills' speech, a prior restraint 'freezes' it, at least for a time." Nebraska Press Association v. Stuart, 427

U.S. 539, 559 (1976). Alexander Bickel's words apply with redoubled force to Rose's case: "Prior restraints fall on speech with a brutality and finality all their own. Even if they are ultimately lifted they cause irremedial loss -- a loss in the immediacy, the impact of a speech." A. Bickel, The Morality of Consent 61 (1975), quoted in Nebraska Press, 427 U.S. at 609.

Over three years have passed since the Chief Justice published his dissent; Rose's full response to that dissent -- should he ever be allowed to make it -- will now have neither the impact nor the immediacy that it once might have had.

A prior restraint is not per se unconstitutional, but it comes before this Court "with a 'heavy presumption' against its constitutional validity." E.g. Organization for a Better Austin v. Keefe, 402 U.S. 415, 419 (1971). To justify

imposition of a prior restraint, the activity restrained must pose a clear and present danger, or a serious or imminent threat to a protected competing interest. Wood v. Georgia, 370 U.S. 375 (1962), and Craig v. Harney, 331 U.S. 367 (1947); Seattle Times Co. v. Rhinehart, 467 U.S. 20 (1984).

> [B]efore a prior restraint may be imposed by a judge, even in the interest of assuring a fair trial, there must be an imminent, not merely a likely, threat to the administration of justice. The danger must not be remote or even probable: it must immediately imperil.

U.S. v. Columbia Broadcasting System, Inc., 497 F.2d 102, 104 (5th Cir. 1974).

The record before this Court is silent as to any danger -- or even any reasonable likelihood of danger -- posed by lifting the Special Master's Order. Perhaps this is because the damage has already been done. Nothing remains of the confidentiality which was to protect Rose;

the only confidentiality which survives now gags him. Nor can it be said that lifting the Special Master's Order threatens a competing governmental interest: that there is no such interest is evidenced by Colo. R. Civ. P. 201.10(c), which now provides that the hearing "shall be confidential unless the applicant shall request that the hearing be public."

Indeed, the very silence of the record argues against the constitutionality of the Special Master's Order:

> Before a trial court can limit defendants' and their attorneys' exercise of first amendment rights of freedom of speech, the record must contain sufficient specific findings by the trial court establishing that defendants' and their attorneys' conduct is 'a serious and imminent threat to the administration of justice'.

Chase v. Robson, 435 F.2d 1059, 1061 (7th Cir. 1970) (citing Craig v. Harney, 331 U.S. 367, 373); Bernard, 619 F.2d 459, 477; Wood v. Georgia, 370 U.S. 375, 387.

The Special Master's Order falls short of constitutionality in other ways. First, it is not narrowly drawn. Seattle Times v. Rhinehart, 467 U.S. 20; Carroll v. President & Commissioners of Princess Anne, 393 U.S. 175, 183 (1968); Shelton v. Tucker, 364 U.S. 479, 488 (1960); CBS Inc. v. Young, 522 F.2d 234, 238 (6th Cir. 1975); Bernard, 619 F.2d 459, 476. To the contrary, it is so sweeping that it persists even now, more than eight years since Rose was denied admission, and more than four years since he was granted admission, to the Colorado Bar. Without action by this Court, the Special Master's Order will never be lifted.

Second, the Special Master's Order, and the subsequent Colorado Supreme Court Orders affirming it, are vague and overbroad. They are premised on mere references, and references to references, and, finally, on words as imprecise as

"ethical" and "moral". Such amorphous orders cannot stand constitutional scrutiny. Grayned v. City of Rockford, 408 U.S. 104, 109 (1972).

Third, neither the Special Master nor the Colorado Supreme Court considered any less intrusive alternatives to the Special Master's Order. Seattle Times v. Rhinehart, 467 U.S. 20; Village of Schaumberg v. Citizens for a Better Environment, 444 U.S. 620 (1980). To the contrary, by their actions, they have made the Special Master's Order even more intrusive: They have permitted the release of information critical of Rose only to prohibit Rose from responding to it.

CONCLUSION

For the foregoing reasons, Petitioner respectfully prays that the Court issue a writ of certiorari to review the judgment

of the Colorado Supreme Court.

Respectfully submitted,

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January 15, 1986

85-1188

No. _____

Supreme Court, U.S.
FILED
JAN 15 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

October Term, 1985

MICHAEL THOMAS ROSE,

Petitioner,

v.

THE SUPREME COURT OF
THE STATE OF COLORADO,

Respondent.

APPENDICES TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

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242P

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Table of Contents

Page

Orders of the Court Below

A. Order of the Colorado Supreme Court Denying in Whole Rose's Petition for Relief (October 17, 1985)..... 1a

Opinions, Orders, Findings of Fact and Conclusions of Law Rendered by Courts and Administrative Agencies

B. Letter from David W. Brezina, Clerk of The Colorado Supreme Court, to Michael T. Rose (October 27, 1982) (refusing to rescind the rules and orders of confidentiality)..... 3a

C. Report of the Bar Committee Pursuant to C.R.C.P. Rule 212 (December 27, 1976)..... 6a

D. Order of the Supreme Court of the State of Colorado Denying Rose Admission to the Colorado Bar (January 6, 1977)..... 14a

Table of Contents

		Page
E.	Master's Report in Which the Special Master Recommended that Rose be Admitted to the Colorado Bar (May 8, 1981).....	14a
F.	Order No. 2 of Special Master (January 21, 1970).....	30a
Other Appended Materials		
G.	Letter from Barnard Houtchens to the Colorado Supreme Court (December 6, 1976).....	32a
H.	Reporter's Transcript, In re Admission of Rose, Colorado State Board of Law Examiners April 30, 1976 hearing.....	34a
I.	Reporter's Transcript, In re Admission of Rose, Colorado State Board of Law Examiners, June 4, 1976 hearing.....	88a
J.	Letter from Richard F. Hennessey to the Colorado Board of Law Examiners (September 24, 1976).....	109a

Table of Contents

		Page
K.	Report to the Colorado Bar Committee from Roger Cisneros (undated)....	125a
L.	Affidavit of Michael T. Rose (June 12, 1985).....	126a
M.	Memoranda from Justice Groves to the Colorado Supreme Court (December 8, 1976 and January 5, 1977).....	133a
N.	Letter from Michael Rodak, Jr. to Justice Groves (January 22, 1979)...	135a
O.	Letter from Justice Groves to Rose (March 5, 1979).....	138a
P.	Letter from Justice Groves to Michael Rodak, Jr. (April 17, 1979).....	141a
Q.	Letter from Michael Rodak, Jr. to Rose (November 27, 1978).....	150a
R.	Affidavit of Jordan Hochstadt and Richard S. Strauss (June 11, 1985).....	152a

Table of Contents

Page

S. In re Admission of Rose, 50 U.S.L.W. 3714 (March 9, 1982)..... 161a

T. Stevens Criticizes Burger, O'Connor for Attacking Bar Applicant, The Washington Post, March 9, 1982..... 167a

High Court Justices Differ on Admitting Lawyers to the Bar, New York Times, March 9, 1982..... 171a

Burger Fails to Block Coloradans Admission, The Denver Post, March 9, 1982..... 175a

Two Justices Swap Heated Remarks Over Routine Bar Admission Process, The National Law Journal, March 22, 1982..... 183a

High Court Admits Lawyer Over Objections, Colorado Springs Sun, March 9, 1982..... 188a

Lawyer 'Offended', Raps Burger Action, Denver Post, March 10, 1982..... 193a

Table of Contents

Page

U. Affidavit of Donald C. Odegard, Sr. (October 30, 1984)..... 198a

V. Respondent's Memorandum in Opposition to Michael T. Rose's Motion for "Partial Summary Judgment" (May 13, 1985)..... 206a

W. Motion to Withdraw Rules and Orders of Confidentiality (October 18, 1982)..... 235a

X. Affidavit of Robert C. Moore (June 10, 1985)..... 240a

Y. U.S. CONST. amend V..... 245a

Z. U.S. CONST. amend XIV, § 1.... 246a

AA. 28 U.S.C. § 1257(3) (1970).... 247a

BB. Colo. R. Civ. P. 201..... 248a

CC. Letter from Justice Groves to Congressman Charles H. Wilson (October 26, 1977)..... 284a

DD. U.S. CONST. amend I..... 286a

APPENDIX A

Supreme Court
State of Colorado

In Re:

Application of Michael T. Rose for
Admission to the Bar of the State of Colorado

Upon consideration of the Petition for Relief, Memorandum in Support thereof and Appendices thereto filed herein, and now being sufficiently advised in the premises,

It Is This Day Ordered that the Petition for Relief shall be, and the same hereby is, Denied.

BY THE COURT, EN BANC, OCTOBER 17, 1985

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Board of Continuing Legal & Jud. Ed.
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APPENDIX B

Clerk's Office
Supreme Court
State Of Colorado
Denver 80203

October 27, 1982

Michael T. Rose
7417 Northside Drive
Suite B
Charleston, SC 29405

RE: Request for Release from Confidentiality

Dear Mr. Rose:

Please be advised that your request for release from rules and orders of confidentiality regarding your application, denial of admission and admission to the Bar of the State of Colorado has been considered by the Supreme Court, en banc. I have been authorized to advise you as follows:

(1) On January 22, 1979, the Clerk of the United States Supreme Court sent to this Court a letter requesting information on the denial of your admission to the Bar of this Court.

(2) On March 5, 1979, Justice James K. Groves sent you a letter stating that such information would not be released without your consent.

(3) On March 16, 1979, you wrote a letter to justice Groves consenting to the release of this background information. A copy of this letter is attached hereto.

(4) On April 17, 1979, Justice Groves transmitted this background information, with the consent of all parties to the proceedings except the Congressman, to the Clerk of the U.S. Supreme Court. A copy of this letter and list of exhibits is attached.

(5) Should you require another copy of these exhibits you may receive same upon payment of the copying cost of $50.25.

(6) That you may use these exhibits as you see fit.

(7) That the Court will not grant permission to waive the rules and orders of confidentiality other than as set forth herein.

(8) That no material other than that referred to in (4) above has been released to the U.S. Supreme Court or any other person by this Court or its Boards or Committees.

(9) That should you appear at the public hearing on the proposed Rules Governing Admission To The Bar set for November 5, 1982 at 9:00 a.m., you will not be permitted to discuss your individual case as such is not relevant to this hearing.

If you wish to have the copies referred to in (4) above, please send your check payable to the Clerk of the Colorado Supreme Court and same will be forwarded to you by return mail.

Sincerely,

David W. Brezina
Clerk of the Supreme Court

DWB:lm

cc: State Board of Law Examiners

APPENDIX C

Before the Supreme Court

OF THE STATE OF COLORADO

IN THE MATTER OF
THE APPLICATION OF

MICHAEL THOMAS ROSE
a/k/a MICHAEL T. ROSE

REPORT OF THE BAR COMMITTEE
PURSUANT TO C.R.C.P. RULE 212

INTRODUCTION

By application dated and received December 24, 1975, Michael T. Rose applied for admission to the Bar of Colorado, as a Class C applicant pursuant to C.R.C.P. Rule 202(8).

Mr. Rose,(sometimes referred to hereinafter as "applicant") is a member of the Bar of California (admitted August 8, 1975) and of the Bar of Pennsylvania (admitted November 19, 1973 and suspended in April, 1974).

The applicant took the written examination for admission to the Colorado Bar, held in February, 1976, on which he received a passing grade.

While Mr. Rose's application for admission was pending several complaints bearing upon his ethical, moral and professional qualifications were received by the Supreme Court and the Colorado State Board of Law Examiners.

Following receipt of the complaints the Bar Committee conducted extensive inquiry into the applicant's moral and ethical

fitness and pursuant to C.R.C.P. Rules 216 and 217 conducted hearings at which the applicant and his counsel were present. Consideration has included: review of the extensive application file, including the above mentioned complaints, the large number of letters of recommendation, and the several detailed written statements submitted by the applicant; two appearances before the Committee on April 30, 1976 and June 4, 1976, by the applicant accompanied by counsel during which he offered testimony under oath which was recorded by a certified shorthand reporter; personal appearances of Andrew Blair and Douglas Bragg, attorneys on behalf of Mr. Rose, and of Glenn G. Saunders and Willard S. Snyder, attorneys, and Lorraine Handrow, secretary and office manager, all of the Denver law firm of Saunders, Snyder, Ross & Dickson, P.C.; review of the results of inquiries into aspects of the complaints conducted by Senator Roger Cisneros, Committee member, and by Richard F. Hennessey, Committee Counsel for this Court; and responses to inquiries from the Pennsylvania and California Bars regarding the applicant's professional status. After fully considering the matter of Mr. Rose's ethical and moral fitness at its September 24, 1976 and December 3, 1976 meetings, the Committee makes the following findings, conclusions and reccommendations regarding the applicant's admission to the Bar of Colorado.

FINDINGS

I

1. In his written application to the Colorado Bar, Mr. Rose stated in response to item 18 that he had the "present right to practice law" and was "qualified" in California and Pennsylvania.

2. Correspondence received from the Disciplinary Board of Supreme Court of Pennsylvania, dated October 4, 1976 and October 25, 1976 indicates that, although Mr. Rose initially registered there under No. 18353, he was suspended from the

Bar of Pennsylvania in April, 1974, and has remained suspended from that Bar since that time for failure to comply with Pennsylvania Supreme Court rule regarding annual registration of attorneys.

II

1. By letter dated April 9, 1976 Mr. Rose contacted U.S. Air Force Colonel Allan L. Zbar, at Lowry Air Force Base in Colorado, in an effort to seek admission to the Judge Advocate General's Department Reserve.

2. This letter was on the official stationery of the law firm of Saunders, Snyder, Ross and Dickson, P.C., where Mr. Rose was employed at the time as a law clerk, and contained the following statement: "now that I am a civilian attorney practicing law in Denver . . .". The letter was signed by Mr. Rose under the firm's professional name and over his full name.

3. The form of the letter on a Colorado law firm stationery and the contents of the letter clearly misrepresented Mr. Rose's status to be a lawyer admitted to practice in Colorado.

4. Such misrepresentation was intentional.

III.

1. Several other matters involving Mr. Rose's misrepresentation of his status as a Colorado attorney in the course of his representation of clients in the military justice system came to the Committee's attention.

2. In the course of these contacts military justice officials were left with the impression that Mr. Rose was a Colorado attorney.

3. Mr. Rose's participation as an attorney in the military justice system does not depend on his status as a Colorado attorney.

4. During the time period involved in these matters, Mr. Rose was a resident of Denver, Colorado.

5. Under the circumstances it is not unreasonable to conclude that erroneous impressions regarding Mr. Rose's status as a Colorado attorney were due to the nature of the contacts, the different eligibility requirements for participation as an attorney in the military justice system and possible confusion due to Mr. Rose's Denver residence.

IV.

1. During the period from 1974 through 1976, Mr. Rose and several of his former Air Force Academy schoolmates were involved in a joint business venture with another schoolmate, a Ronald Gollehon, for the purpose of investing in real estate. Mr. Gollehon is also a Colorado resident.

2. Mr. Gollehon appears to have been the organizational principal and financial manager in these investment activities.

3. The legal forms of the business entities under which the participants were associated and under which investments were made are not clear and are currently a matter of legal dispute.

4. Another matter currently in legal dispute is whether the legal requirements regulating these investment activities were met.

5. During the late 1975 and early 1976 a controversy arose between Mr. Gollehon and the rest of the investors, including Mr. Rose, concerning the nature and the status of the invest-

ment made on their behalf by Mr. Gollehon.

6. During the same time period, Mr. Gollehon was providing some significant financial backing to Group Legal Services of America, Inc., of which Mr. Rose was president.

7. At approximately the same time the controversies arose concerning the above real estate investments, another and separate controversy arose between Mr. Gollehan and Mr. Rose concerning Mr. Gollehon's apparent failure to keep certain financial commitments to Group Legal Services.

8. On or about January 15, 1976 Mr. Rose commenced employment as a law clerk with the Denver Law firm of Saunders, Snyder, Ross & Dickson, P.C.,

9. By letter dated February 24, 1976, Mr. Rose wrote the other participants in the real estate investment venture. The letter contained the following statements:

. . .because apparently I am the only "partner" in Colorado and the only lawyer in the group, our collective interest might best be served by Gulf Coast Properties and its members being represented by me and my law firm (Saunders, Snyder, Ross & Dickson, P.C.) here in Denver. Three of the partners have requested or suggested that we do so.

If the partners want us to represent them, we would do so on these terms. The firm, with my having primary responsibility, would evaluate and analyze the facts regarding what has happened to our monies, would report to the known members of the "partnership" the status thereof and our options and remedies; and would take whatever remedial actions agreed upon by the "partnership" as being in our best interests. Besides determining what has happened to and how to retrieve our monies, there are several other questions regarding our status (e.g. What are our legal relationships? Do we have a "partnership?") that we will attempt to answer.

To represent the partnership, the firm will require a retainer, normally of $500, against which actual costs and fees for attorney time would be credited. My time is billed by the firm at $35/hour ($60/hour for military cases.)

. . .

I suggest that everyone send to the firm $75 for me and the firm to represent your interests in this matter. I will pay my share in donated time, working as an attorney on the case. When the firm has received a total of $425, we will formally begin to represent you coordinating our efforts with the SEC's.

10. This letter was written on the official firm stationery of the law firm of Saunders, Snyder, Ross & Dickson, P.C., and was signed by Mr. Rose under the firm's professional name and over his own full name.

11. Aside from the question of the impropriety of such a solicitation, the background, the form and the substance of this letter created the reasonable impression that Mr. Rose was a member of the Bar of Colorado.

12. Mr. Rose wrote numerous subsequent letters in similar form on law firm stationery to the other participants, to parties aligned against the other participants, and to third persons which created the reasonable impression that he was a member of the Bar of Colorado.

13. In the course of personal contacts with other persons in regard to this controversy, Mr. Rose also created the reasonable impression that he was a member of the Bar of Colorado.

14. Mr. Rose did not take appropriate steps, reasonable under the circumstances, to disclose that he was not a member

of the Bar of Colorado in business contacts, with other parties and attorneys, which related to this controversy.

15. Mr. Rose did not take appropriate steps, reasonable under the circumstances, to disclose to the other participants in the real estate investment ventures, to whom he had offered legal representation, the existence and nature of his other controversy with Mr. Gollehon arising out of their (Rose's and Gollehon's) business relationship in Group Legal Services of America, and the possible existence of conflicting interests in his representing their mutual interests regarding their investments while advocating his own interest regarding Group Legal Services of America.

16. Mr. Rose without clear authorization of each named plaintiff authorized the filing of suit against Mr. Gollehon regarding the real estate investments.

17. During April, 1976 Mr. Rose, without the authorization of Saunders, Snyder, Ross & Dickson, P.C., commissioned on their behalf another attorney, Richard L. Daly, to file the suit, referred to in the preceding paragraph, for which services Mr. Daly billed Saunders, Snyder. Ross & Dickson, P.C. pursuant to instructions from Mr. Rose.

18. Mr. Rose's employment as a law clerk was terminated by Saunders, Snyder, Ross & Dickson, P.C. on or about April 30, 1976.

CONCLUSIONS

The Committee concludes that the applicant has engaged in a pattern of conduct evidencing: irresponsibility in professional matters in that he was suspended from the Bar of Pennsylvania, for a period of over two years, for his failure to comply with the Pennsylvania Supreme Court's attorney registration rule and misrepresenting his status in this regard on his ap-

plication to the Bar of Colorado; continued lack of candor in business and professional matters concerning his not being a member of the Bar of Colorado; continued violation of reasonable rules of conduct in his capacity as a law clerk and in work on legal matters in his association with a Colorado law firm. Such conduct is inconsistent with the standards set forth in C.R.C.P. Rule 212.

The Committee has considered the fact that the applicant is a person whose first admission to practice was in 1973. In considering this matter the Committee has concluded that the inclinations evidenced by the applicant's conduct are likely to be carried over by the applicant in the practice of law.

RECOMMENDATION

At its December 3, 1976 meeting five members of this Committee (Donald S. Stubbs, Jacob L. Sherman, Warren L. Turner, Cover Mendenhall and Bernard Houtchens) recommended against admission of the applicant to the Bar of Colorado. One member of the Committee, Senator Roger Cisneros, recommended the applicant's admission.

Dated this 27th day of December, 1976.

Respectfully submitted,

Bernard Houtchens, CHAIRMAN

APPENDIX D

In the Supreme Court

IN THE STATE OF COLORADO

In the Matter of the
Application of
MICHAEL THOMAS ROSE
For Admission to the Bar

ORDER

The recommendation of the Bar Committee of the Colorado State Board of Law Examiners dated Decemer 27, 1976, is hereby approved, and IT IS ORDERED that the application of MICHAEL THOMAS ROSE for admission to the bar be and hereby is denied.

DONE BY THE COURT EN BANC, JANUARY 6, 1977.

APPENDIX E

In re the Application of:
MICHAEL T. ROSE, for
admission to the Bar of the
State of Colorado.

MASTERS REPORT

APPEARANCES:

HOCHSTADT, STAW & STRAUSS, P.C.
Jordan Hochstadt
Richard S. Strauss
Attorneys for Applicant

LINDA DONNELLY, Special Counsel for the Supreme Court
Philip A. Harley, Assistant

INTRODUCTION

Applicant, Michael T. Rose, received passing marks in the February 1976, Bar Examination. However, because complaints were filed with the State Board of Law Examiners, the Bar Committee conducted proceedings to investigate the complaints. Pursuant to such proceedings, the Bar Committee filed a report recommending to the Supreme Court that applicant not be admitted to practice law in Colorado. The Supreme Court approved the report in an order dated January 6, 1977. A petition for rehearing was denied.

In 1978, applicant filed a petition for admission, asserting, inter alia, that even if he lacked the moral and ethical qualifications to practice law in Colorado in 1976, that he now possesses those qualifications. Amended, and second amended applications were filed. Special counsel was appointed to conduct an investigation and make a report to the Supreme Court. Following receipt of the report on December 19, 1979, James Bunch was appointed Special Master to conduct proceedings and report his findings and conclusions. Mr. Bunch recused himself and on May 5, 1980, Harry S. Silverstein, Jr. was appointed Special Master in his stead. After preliminary proceedings, as hereinafter set forth, a final hearing was held on February 16, 17, and 18, 1981. Following the filing of briefs, this report is submitted.

PRELIMINARY PROCEEDINGS

Pleadings: The Amended Petition for Admission filed by applicant on or about May 31, 1979, was treated as a complaint. The Report of Special Counsel, as amended, was treated as an answer and counterclaim.

THE PETITION

Paragraphs 1-3 set forth the denial of applicant's admission to the bar and allege that, because of asserted deficiencies, the denial was in violation of C.R.C.P. 217, and of the due process clauses of the Colorado and the United States Constitutions.

NOTE: On October 17, 1980, the Special Master ruled that, because these issues had previously been considered by the Supreme Court, they would not be re-litigated in these proceedings.

Paragraph 4 sets forth the damage suffered by applicant as a result of the denial of his admission to the Colrado bar.

Paragraphs 5-8 set forth the issues to be determined in these proceedings, namely: 1) Are the conclusions of the Report of the Bar Committee still valid, and 2) Has applicant carried past misconduct into his law practice?

Paragraphs 5 and 6 set forth the reasons why the above two issues should be resolved in applicant's favor.

Paragraphs 7 and 8 allege that applicant understands the impropriety of his actions on which the Report of the Bar Committee was based; that applicant has not indulged in any misconduct in his practice of law in the states where he has been admitted to practice law, namely, California, Pennsylvania, and Minnesota, and that he now possesses the moral and ethical qualifications necessary for admission to the practice of law.

THE REPORT OF SPECIAL COUNSEL

Paragraph 1 sets forth the history of this action.

Paragraphs 2-7 allege various acts which were asserted to warrant denial of applicant's petition. All of these paragraphs were dismissed as follows:

Paragraph 2, dismissed October 17, 1980, on applicant's motion, because previously considered and ruled on by the Bar Committee in its report.

Paragraphs 3, 4 and 5, dismissed February 9, 1981, on motion of Special Counsel on ground that information developed in depositions and other investigation by Special Counsel disclosed that said acts did not indicate that applicant should not be admitted, or were acts taken in good faith and should not be pursued.

Paragraphs 6 and 7, dismissed on December 19, 1980, on motion of Special Counsel on ground that after thorough investigation the allegations could not be proved by a preponderance of the evidence.

Paragraph 8 alleges that applicant testified falsely in a hearing before a referee involving an unemployment compensation claim filed by applicant following his discharge from employment by the law firm of Saunders, Snyder, Ross and Dickson.

AMMENDED REPORT OF SPECIAL COUNSEL

On December 19, 1980, Special Counsel filed a motion to amend the Report of Special Counsel, parts of which were stricken by agreement of counsel. On January 13, 1981, over objection of the applicant, the Special Master granted the motion in part. The allegations remaining in the Amended Report are contained in paragraphs 1,2(c), 3, 4(a), (b), (c), (e) and (f). They allege that applicant has an extremely vindictive character and lack of self control which indicate mental or emotional instability, as evidenced by his litigation against Dr. Jules Silver, and his bringing of actions for attorney fees against West Point cadets and other unidentified clients.

The Report of Special Counsel also asserted that the conclusions of the Bar Committee are still valid and denied the allegations of the applicant's petition.

COLLATERAL MATTERS

Several preliminary hearings were held at which rulings were made as follows:

Special Master James Bunch held hearings on January 11, 1980 and January 21, 1980, following which Orders 1-4, relative to the taking of depositions, were entered. In Order No. 5, James Bunch recused himself.

Special Master Silverstein held hearings on May 20, 1980, October 17, 1980, and December 19, 1980, from which the following orders were issued: Order No. 6 denied Special Counsel's motion for medical examination of applicant; and granted in part Special Counsel's motion for release of information.

Order No. 7 limited issues at October 17 hearing. At that hearing, inter alia, applicant's motion to dismiss paragraph 2 of Report of Special Counsel was granted, the burden of proof at trial (hereinafter set forth) was established, and the issues were limited.

At the December 19 hearing, Special Counsel's motion to dismiss paragraphs 6 and 7 of Special Counsel's Report was granted. On January 14, 1981, by Order No. 8, rulings were made on Special Counsel's motion for production of documents and things, and on the motion to amend the Special Report, as above set forth.

On January 22, 1981, a pre-trial order was issued. It was amended on February 9, 1981, by stipulation of the parties. Trial was held on February 16, 17 and 18, 1981.

THE TRIAL

Pursuant to a previous order the applicant had the burden of proof as to the allegations of his petition and Special Counsel had the burden as to the allegations in the Special Counsel's Report, as amended, with both parties having a right of rebuttal.

(Note: The pre-trial order issued January 22, 1981, contains references to certain issues of law, and proposed stipulations of fact as set forth in applicant's original and amended pre-trial statements. Due to the stipulation of the parties striking paragraphs 3, 4, and 5 of Special Counsel's Report, and the amendment to the pre-trial order on February 9, 1981, all of the issues of law *except* 12, 20 and 21, and all of the issues of fact *except* 94, 95, 96, 99 and 100 are no longer relevant issues. The issues remaining will be treated in the following Findings of Fact and Conclusions.)

FINDINGS OF FACT

The Special Master, having reviewed the testimony at the trial, the exhibits admitted, and the depositions submitted without objection, finds:

The following facts are undisputed:

A. Applicant is admitted to practice law in California, Pennsylvania and Minnesota. He was admitted in California prior to 1976.

B. He was also admitted in Pennsylvania prior to 1976. However, at the time of his first applciation to be admitted in Colorado, he had been suspended because of his failure to register. Upon learning of this suspension he complied with the registration requirements, and is now in good standing in Pennsylvania, in inactive status.

C. He was admitted to practice in Minnesota in 1978. In his application for admission he disclosed the fact that he had been denied admission in Colorado, and set forth the details of the grounds relied on for his non-admittance.

D. While working for a law firm in Minnesota prior to his admittance to practice, his business cards and letters disclosed that he was admitted to practice only in California and Pennsylvania.

E. The record reflects the following evidence relative to applicant's residence:

Applicant is presently a student at Harvard Business School, Boston, Massachusetts. At the time he took the Colorado Bar Examination he was a resident of Colorado, living at 953 Filmore Street in Denver, in a house which he owned, and which he still owns.

He still considers himself to be a resident of Colorado, pays property taxes and income taxes in Colorado, and possesses a Colorado drivers license. If admitted to practice, he intends to commence the practice of law in Colorado within one year of being notified of his admission. (Transcript pp. 26-19)

On his applicaiton for permission to take the Minnesota Bar Examination (Exh. 16) he claimed legal residence in both Minnesota and Colorado.

PARAGRAPHS 5-8 APPLICANT'S PETITION

In the Report of the Bar Committee to the Supreme Court, dated December 27, 1976 (Exh. 4), the Committee concluded that applicant had evidenced irresponsibility in professional matters, and lack of candor, and that such inclinations were likely to be carried over by the applicant in the practice of law.

Applicant has alleged that, although valid at that time, the conclusions of the Committee are no longer valid, that the im-

proper conduct has not been carried over to his practice, and that he now has the moral and ethical qualifications necessary for admission to practice law. As pertinent to these issues the record shows the following facts.

Subsequent to his denial of admission to the Colorado Bar applicant complied with the Pennsylvania registration requirements and is now in good standing in the bar of that state, on inactive status. In 1977 he was admitted to practice law in Minnesota, and practiced there until August 1979 with the law firm of Robins, Davis & Lyons, of St. Paul. Five of the partners of that firm, by affidavit, assert that they believe that applicant "is of high moral character and is in all other ways qualified to be a practicing attorney" in Colorado.

From September 1979, to the present, applicant has been a student at Harvard Business School, where he is scheduled to get his degree in June 1981. He is chairman of the Student Clubs Committee. The committee is composed of the presidents of the various clubs in the Business School, and oversees the handling of club finances and elections. The chairmanship of the committee is an elected office. His fellow students appear to hold applicant in high regard, both for his capabilities and his moral integrity.

Since November 1979, applicant has done part-time work as a consultant for a Boston lawyer, Mr. Michael J. Flynn, who has great esteem for applicant and states he is "more highly ethical" than other attorneys with whom Flynn has had experience. (Flynn desposition).

Applicant has applied for admission to the United States Supreme Court, which was apprised of applicant's status in Colorado. That application is being held in abeyance pending determination of the present proceedings. (Exh. 13).

In seeking employment applicant advised prospective employers of his being denied admission in Colorado. However, this disclosure was not made until after he was offered a job, and upon his making this disclosure each of the job offers was withdrawn.

Applicant also disclosed the fact that he had been denied admission in Colorado to business associates and some of the students at Harvard. Those who so testified, by deposition, evidenced by their testimony a vague and limited understanding of the reasons why applicant was denied admission.

PARAGRAPH 8 SPECIAL COUNSEL'S REPORT

Paragraph 8 of the Special Counsel's Report alleges that applicant testified falsely in a hearing before a referee in an unemployment compensation action, following applicant's termination of employment by the firm of Saunders, Snyder, Ross and Dickson. It is alleged that applicant testified falsely in that he denied he was warned about his improper use of facts; denied he was warned not to approach problems vindictively, and asserted the reason he was fired was because he was called before the "ethics committee."

The transcript of the testimony at the hearing before the referee (Exh. Z) discloses that Mr. Snyder testified for the employer as follows: Applicant was hired as a law clerk prior to his taking the Colorado bar examination; that, at a conference in mid-March, applicant was advised that the firm was dissatisfied with his work in that he was spending too much time on his personal affairs, his approach to problems was too vindictive, and he misused facts.

He further testified that applicant did not change his ways. His discharge resulted from that failure to heed the warning and a letter which applicant wrote to Colonel Alan L. Zbar in which he stated, "I am a civilian attorney practicing law in Denver . . ."

(Note: This letter was reported to, and considered by the Bar Committee in its report to the Supreme Court).

The applicant testified that he was warned about spending too much time on his own work, and that he remedied this problem; that he had not been told he was vindictive, and that he believed his firing was due to his being called before the "ethics committee." (Note: He was referring to his hearing before the Bar Committee of the Board of Law Examiners).

The employer, in response to the claim for unemployment compensation, filed with the Department of Labor a Statement of Facts (Exh. X) in which one of the Reasons for Termination stated, "We also learned that (applicant) was to appear before an ethical committee the afternoon of April 30."

At the hearing before the Special Master several members of the employer's firm testified (transcript pp. 158-255) reaffirming the employer's grounds for applicant's discharge from employment.

The referee found that applicant was discharged because of the letter to Colonel Zbar and "the differences of opinion in the firm between the claimant and the employer . . ." He determined that appellant was basically responsible for the separation (Exh. AA). The Industrial Commission affired the referee's order (Exh. DD).

FINDING: In considering all of the testimony and exhibits pertinet to this issue, the Special Master finds that the testimony of the applicant before the referee represents the customary difference of perspective between an employer and a discharged employee usually reflected in unemployment compensation actions.

PARAGRAPHS 2(c), 3, 4(a), (b), (c) SPECIAL COUNSEL'S AMENDED REPORT

In September 1974, applicant was hired by Dr. Jules Silver to represent him and his company, Masti-Kure Products Com-

pany, Inc. in a dispute with the Federal Food and Drug Administration. The hiring was evidenced by a written contract which set forth a detailed fee agreement. Although there was a successful conclusion to the action brought in his client's behalf, Dr. Silver refused to pay the entire fee claimed by applicant, asserting that applicant had been replaced by other counsel midway through the proceedings, because of applicant's lack of ability to handle the matter properly.

In January 1975, in order to settle the dispute, Dr. Silver paid applicant $7,000, in exchange for which applicant executed a full release, releasing Dr. Silver and his company from all claims which applicant had, or might have, against them. However, in May 1975, applicant wrote a lengthy letter to Dr. Silver, asserting that the release was invalid because of lack of consideration and duress, and threatened to sue Dr. Silver if a claimed balance due was not promptly paid.

Nothing was paid, and in November 1976, appliant filed an action in the United States District Court for the District of Columbia, appearing *pro se*. The complaint alleged breach of contract, quantum meruit, negligence, misrepresentations, abuse of process, outrageous conduct, and infliction of emotional distress, and asked for declaratory judgment and damages. At the trial court's suggestion an amended complaint, drafted by an attorney employed by applicant, was filed. This suit was dismissed on March 24, 1977, by the court on the ground that it appeared "beyond a legal certainty that the only amounts validly in issue" totalled only $4,253.62

On April 11, 1977, applicant, through his attorney, filed suit in the Superior Court of the District of Columbia, alleging claims in breach of contract, quantum meruit, and misrepresentation and unjust enrichment. Jurisdiction was asserted under the District's long arm statute. The trial court dismissed the action for lack of personal jurisdiction over the defendants. Applicant appealed and, on October 30, 1978, the

District of Columbia Court of Appeals reversed the trial court and ordered the complaint reinstated.

In July 1978, while the above appeal was pending, a similar action was filed in Common Pleas Court in Connecticut by appellant, appearing *pro se*. There is no evidence in the record relative to the current status of thse actions.

The action was filed in Connecticut "in order to avoid the running of the statute of limitations." (Exh. 12).

Between July and September 1976, applicant was hired by more than 100 cadets of the United States Military Academy at West Point, New York, to provide legal assistance with respect to charges that the cadets had violated the Cadet Honor Code. Each cadet signed a retainer contract which set forth specific fee provisions.

PARAGRAPH 4(e) SPECIAL COUNSEL'S AMENDED REPORT

After the work was successfully completed applicant sent bills to each of the cadets, most of whom paid their share of the fee. However, about one-fourth failed to pay, and, in June 1978, just before the cadets would graduate, applicant, through an attorney, filed two suits to collect the fees asserted to be still unpaid. The actions were brought in the Supreme Court: State of New York, Orange County, and in the United States District Court for the Southern District of New York.

In the U.S. District Court case default judgement against all defendants was obtained, and later set aside on defendants' motion, and defendants filed an answer. On February 7, 1979, the court ordered the case to be placed on the suspense calendar, pursuant to the Federal Soldiers' and Sailors' Relief Act of 1940, with the provison that the case could be removed from that calendar as to each cadet upon a proper showing of his release from military service. The record here reveals no such releases.

In the Supreme Court case an ex parte writ of attachment was issued and executed on the bank accounts of the defendants. Defendants' motion to abate the action under the New York Soldiers' and Sailors Relief Act was denied. Motions by both sides to take depositions of opposing parties have been filed, but none have been taken, due on the one hand to defendants' unavailability because of their military service, and on the other hand due to applicant's asserted inability to go to New York.

On November 21, 1978, an order was entered requiring applicant to appear "for an examination before trail within 20 days after the case first appears on the ready day trial calendar . . . In the event plaintiff comes in to the state sooner, plaintiff's counsel shall notify attorney for the defendants and plaintiff shall make himself available for examination as aforestated . . . " Applicant testified that he was not aware that his order had been entered, and that he had been in New York two or three times since the order was entered.

No action was taken in the suit from the date of the order until December 1980, when applicant filed responses to written interrogatories which had been propounded some two years earlier. The responses were filed after defendants had filed a motion to preclude applicant from offering any evidence, due to his failure to so respond. Nothing further has transpired in the action since December 1980.

Mr. Frank Plaut, lawyer and former member of the Grievance Committee gave his opinion that the bringing of these actions, the timing thereof, and the actions taken therein did not constitute unethical conduct, did not evidence irresponsibility, immoral conduct, or vindictiveness. (Transcript pp. 280-287).

CONCLUSIONS

1. GENERAL CONDUCT. During his practice in Minnesota, applicant's employers were very satisfied with his work and found him ethical and reliable in all respects. At Harvard Business School his fellow students were impressed by his awareness of moral and ethical considerations in the various business problems they were assigned to solve. He acquired a position of leadership among his classmates.

Lawyers with whom he worked in Boston and in the handling of the West Point cadet cases were favorably impressed with his handling of the various matters both from a legal and an ethical standpoint.

From all of the evidence it is concluded that applicant has not carried past misconduct into his law practice.

It is further concluded that in the years since his denial of admission -- and possibly because of it -- applicant has matured and achieved a somewhat more reasoned outlook on life than he had in 1976.

2. TESTIMONY BEFORE THE REFEREE. Although there is a conflict in the testimony before the referee relative to the subjects discussed at the March meeting between the employer and the applicant, it appears from the entire record of the Industrial Commission that the ultimate reason for applicant's discharge was the letter to Colonel Zbar, and applicant's being called to appear before the Bar Committee, as testified by applicant.

3. THE SUITS AGAINST DR. SILVER. These suits were begun in 1976, and at least the action in the Superior Court of the District of Columbia is still pending. While attending business school applicant has done nothing to press advance-

ment of the action, and, apparently, neither have the defendants. While the bringing of these actions indicates an element of vindictiveness, and although I disapprove of the dilatory lack of action, I conclude that the bringing and pursuit of this action do not warrant denial of admission to practice law.

4. THE SUIT AGAINST THE WEST POINT CADETS. These suits to recover fees do not evidence vindictiveness. The timing was necessitated by the fact that, following graduation, the cadets would be assigned to posts around the United States and in foreign countries. The failure to attempt to collect the pro-rata share from the non-paying cadets could, if applicant so elected, place an unfair burden on those who had paid to pay the delinquent cadets' shares. Here the delay in prosecuting the action is due, not only to applicant's failure to submit to the taking of a deposition, but also to the unavailability of the cadets for the taking of their depositions. The fact that applicant was unaware of the order to appear to be deposed when he came to New York appears to be a delinquency on the part of his attorney.

5. ULTIMATE CONCLUSION. Therefore it is the conclusion of the Special Master that applicant is moraly and ethically qualified to practice law, and that his prior misconduct has not been carried over into his practice of law.

It is further concluded that, even if the issues of vindictive character and lack of self control are properly before the court and are proper criteria for determining applicant's qualification for admission, the evidence presented does not establish these propensities as being present in applicant at this time.

RECOMMENDATION

It is the recommendation of the Special Master that, upon his establishing actual residence in the State of Colorado, applicant be admitted to the practice of law in this state.

Respectfully submitted,

Harry Silverstein, Jr.
Special Master

Dated: May 8, 1981

APPENDIX F

IN THE SUPREME COURT

OF THE STATE OF COLORADO

IN RE:	)	
	)	ORDER NO. 2
Application of:	)	
	)	OF SPECIAL MASTER
MICHAEL T. ROSE	)	

At a scheduled hearing in this matter, the parties raised the application of Rule 216, C.R.C.P., concerning confidentiality of these proceedings. After hearing the discussions and arguments of the parties and upon consideration, I find and order that:

a. Rule 216, C.R.C.P., is applicable to these proceedings, except that such disclosures as may be reasonably

necessary in order to prepare for hearing, are allowed.

b. The witnesses who may present evidence herein will be afforded the deference and protections usually allowed to witnesses in judicial proceedings in Colorado.

c. Parties and counsel will conduct themselves accordingly.

ORDERED as of the 21st day of January, 1980.

/s/ James T. Bunch

Special Master

APPENDIX G

Law Offices
HOUTCHENS, HOUTCHENS AND DANIEL
1007 Ninth Avenue
Greeley, Colorado 80631

December 6, 1976

Honorable Supreme Court
State of Colroado
State Capitol
Denver, Colorado 80202

RE: Michael T. Rose

Gentlemen:

At a regular meeting of the Bar Committee of the Board of Law Examiners held on Friday, December 3, 1976, with all members of the Committee present except Russell P. Kramer, and with Mr. Richard T. Hennesey, counsel of the Grievance Committee also present at our request, the Committee again

reviewed the "complaints" made against Mr. Michael T. Rose and the many letters submitted in support of his application for admission. For the second time we discussed at length with Mr. Hennessey his investigation in to the matters raised by the "complaints".

Friday's meeting was the third meeting of the Committee at which the subject of the moral and ethical qualifications of Mr. Rose was considered. At the two previous meetings held on April 30, 1976 and June 4, 1976 Mr. Rose was present and represented by counsel and the questions by members of the Committee and the responses thereto made under oath were recorded at the Arpil 30, 1976 meeting by Darlene Pfaff, a certified shorthand reported and at the June 4, 1976 meeting by John D. Boverie, a certified shorthand reporter. The Committee decided against ordering transcripts of these proceedings but told the reporters to preserve their notes in case transcripts became necessary.

At the conclusion of the meeting on December 3, 1976 the members of the Committee present, on motion to recommend the admission of Mr. Rose to the Court made by Senator Cisneros, and duly seconded, voted as follows:

In favor of the motion:	Senator Roger Cisneros
Against the motion:	Donald S. Stubbs Warren L. Turner Cover Mendenall Bernard Houtchens

We will submit the Bar Committee Certificate in customary form as soon as it can be circulated among and signed by the members present and voting at the meeting.

Respectfully submitted,

Chairman
Bar Committee

BH/w

APPENDIX H

Colorado State Board
of Law Examiners
Re: Michael Rose

April 30, 1976
606 State Social Services Bldg.
1575 Sherman Street
Denver, Colorado 80203

State Board:
Barnard Houtchens, Chairman
Don Stubbs
Warren Turner
Jacob Sherman
Roger Cisneros
Alden Hill

Saunders, Snyder, Ross & Dickson
By: Willard Snyder and Andrew Blair
225 East 16th Avenue, #802
Denver, Colorado 80203
Appearing in behalf of Mr. Rose.

PROCEEDINGS

CHAIRMAN HOUTCHENS: Mr. Rose, Senator Cisneros has been laboring in this matter before the Committee with respect to your application and maybe has some questions. I would first state that we are on the record.

MR. CISNEROS: Mr Rose --

CHAIRMAN HOUTCHENS: Just one minute. Is it your understanding that Mr. Rose was to be sworn?

CATHRYN ABLES: Yes.

MICHAEL ROSE, being first duly sworn, was examined and testified as follows:

CHAIRMAN HOUTCHENS: We didn't ask counsel if this was all right with him.

MR. SNYDER: Fine.

EXAMINATION
By Mr. Cisneros:

Q Before we start, Mr. Rose, we did receive a letter from Mr. Moye. I don't think you have a copy of that.

A Yes, sir. He sent me one.

Q All right. Thank you. And I imagine you have copies of the rest of the letters that have been submitted to us. There's one from Mr. Olson.

A Yes, sir.

Q And one from Mr. Blair.

A Yes, sir.

Q Now, as you know, Mr. Rose, the reason that we asked you to meet with us is that there's been some allegations that you've been passing yourself out as an attorney here in Colorado without being admitted to practice.

A Yes, sir.

Q I think one of the main reasons is a letter that you wrote to a Colonel Sabar.

A Yes, sir.

Q I think the letter is dated April 9, 1976 and on the second paragraph you indicate, "Now I am a civilian attorney practicing law in Denver after having served some time in active duty."

A Yes, sir.

Q And there is an affidavit from a Michael Watts, Captain Watts, which indicates that on 31 May, 1975 you called him stating that you were Mr. Rose, an attorney in Denver, Colorado who was representing a client who was a member of the United States Air Force.

So I think essentially those are the two instances we have where there has been some indication, although there are some

letters also from a Mr. Arnison, which indicated that -- this letter is dated April 28, 1976 which also indicates that you apeared at his home and indicated -- led him to believe that you were an attorney.

A Yes, sir.

Q So first of all, I'd like to ask you, do you have any answers to these specific letters that have made those allegations?

A Let me begin by saying, gentlemen, that these charges in my mind are very serious and that since being notified of the charges, I have done everything I can to prepare a presentation which I now wish to give to show that what it all comes down to, these charges are just incorrect and if I may, what I'd like to do is -- unfortunately the circumstances, the aggregate of the circumstances are also somewhat complicated, but I'll try now to go through them. First of all --

Q Let me ask you this: Are you admitted to practice any place at this time?

A I'm a member of the California Bar and the Pennsylvania Bar. I am not admitted in Colorado.

Q Now, you were working with the firm of Mr. Snyder at the time?

A That's correct.

Q Because most of the letters have had the --

A That's correct.

Q In what capacity have you been working there?

A Well, I'm an employee of the firm, much as any associate who has come from out of state to join a law firm, but they're not yet admitted to practice. Now, I came to Colorado in March or April of 1975 of last year from Califor-

nia. Soon after having gotten out of the U.S. Air Force, I came here to assume the presidency of a company and through December, 1975, have done nothing in Colorado whatsoever in any employment capacity except be president of this particular company. In fact, Mr. Blair here, of Dawson, Nagel, Sherman and Howard happened to be the attorney for my company so what I have obtained here, gentlemen, are affidavits and statements from several people, I have at least 30 statements here, from people like our consultants, people we have done business with, my secretary, and so on, saying not only have they not ever seen me represent that I'm a Colorado licensed attorney, and not only have I not practiced law in general at all during that time, but also in these specific instances alleged, but also they have seen me go out of my way in order to avoid anyone thinking that I was a Colorado licensed attorney.

Now one reason for this is the particular company that I've been president of is a group Legal Service Plan Company. The company was incorporated in July of '75 and the majority of my time was in fact spent outside of Colroado promoting this Legal Service Plan Company in some 15 states. In fact, in the six-month period of time in 1975, I personally met with the chairman of the Ethics Committee, including Charles Fredrickson, then chairman of the Ethics Committee here in Colorado, Bar, in 15 states in order to discuss and obtain clearance for our legal service plan. In fact, I had gotten to the point where in October 1975, by invitation I spoke before the American Bar Association's Committee on the Code of Professional Responsibility in Washington by invitation because of my acknowledged expertise or knowledge I would suppose about ethical matters concerning the Bar.

Now, at any rate, turning to the specific allegations made here, I arrived in Colorado at the invitation of a gentleman named Ronald Gallahan, who was financing a company who invited me to become its president and I arrived here in March for the first time just to in effect be interviewed.

Then I moved out here in April and stayed with him, in other words, during May, June, and July, I was not paying rent anywhere, I was just staying with him part-time. In fact, most of my time was spent in these other states.

Now, in May of 1975 a person named Don Peppers, who I've had a personal relationship and an attorney-client relationship for at least two years starting when he was a graduate student at Princeton and I was a legal officer in McFair Air Force Base in New Jersey, came to Colorado. Mr. Peppers was number one in his class in the Air Force Academy and was having continuing problems in the military of one sort or another. Mr. Peppers came to Denver, sought me out and asked my advice on whether or not I thought he was out of the Air Force because of the particular construction of the Federal statute. I then gave him my opinion and contemporaneous with that statement, called Mr. David Wagner and there's an affidavit from Mr. Wagner attesting to that, who is a Colorado licensed attorney and also a personal friend who went with me to the Air Force Academy. He was in Washington D.C. and Mr. Wagner and I discussed the matter and Mr. Peppers -- we agreed that since Mr. Wagner was in Washington D.C., he would go see the Judge Advocate General of the Air Force to ask whether Peppers had to return to his base in Ohio or whether they agreed he was out of the Air Force.

It was agreed since I was in Denver, Colorado and it was a local call, I would call out to Lowry Air Force Base and ask the legal officer there if Mr. Peppers was out of the Air Force and specifically whether he had to return to Ohio. I never, during the entire two years, ever asked for or received any compensation from Mr. Peppers. In fact, he sought me out and, for example, one of the affidavits in there shows because it just so happens that I'm acknowledged as having some particular expertise in this field. In fact, ten days ago I was called by the staff attorney for the American Bar Association's Military Law

Committee to be informed that they want to put me on their committee, so what it comes down to is, I was in a transient status. The last two years I've moved from New Jersey to D.C., to take a legal job there for two months where I was representing a drug company and once that case was over, I moved to California, became a member of the California Bar and moved here.

Peppers during that same period of time was transferred from New Jersey to Denver to Pennsylvania and now he's in Ohio. He arrives in town, asks for my help on something, I call a Colorado licensed attorney, he assumes responsibility for it and his affidavit so states and we agree that in effect under his supervision, but because of my knowledge in this, I have a lot to contribute to this matter too, he would go see the Judge Advocate attorney and I would call Lowry Air Force Base.

Gentlemen, I honestly don't recall the phraseology that I used in that telephone conversation. I'm certain, however, that I did not tell Captain Watts that I'm a Colorado licensed attorney or I'm an attorney practicing in Denver. In fact, his affidavit doesn't say that. What it does is say that he being given the impression that I was a Colorado attorney. Now, there is not motive for me to do that. In fact, Mr. John Moye, who wrote one of those recommendations for me, was legal officer at Lowry himself, and he says he received inquires all the time from people who weren't attorneys at all on behalf of other people where they have to go -- where their son is AWOL and that sort of thing.

I did tell Mr. Watts, I don't recall his name, that I was an attorney and that I was licensed in two states, but I did not tell him, I'm sure that I did not tell him I was a Colorado licensed attorney, but merely I told him that I was calling from Denver.

There is another complaint that I'm sure part of this, which I do not think certainly you referred to and that is it's really con-

temporaneous with this. After I called out at Lowry Air Force Base, I called the Controller General's Office in Washington, I had told Don Peppers and David Wagner told Don Peppers that both of our independent sources, his in Washington and mine at Lowry Air Force Base, concluded Peppers had to go back to Ohio. I told Peppers he had to get local counsel in Dayton, Ohio. In fact, not only did he get local counsel at my suggestion, but in my many trips in these 15 states in which we were promoting my particular company, one of the states was Ohio, and I stopped in Dayton, Ohio to meet with Mr. Muirs, who is the local Ohio licensed attorney that was helping Mr. Peppers.

So what I'm saying is that everything I did for Mr. Peppers was under the supervision of a Colorado licensed attorney or an Ohio licensed attorney.

I was really -- it's questionable whether I was even living here because my belongings weren't here yet, I wasn't paying rent here yet, I was just living with someone and the majority of my time I was spending one day in Florida, one day in Rhode Island, one day in New Jersey, and so on and finally I have never asked any compensation from this gentleman. He sought me out and we had a personal relationship, as his affidavit shows, standard for over two years and he sought me out because he wanted my help.

Now, I did also call Washington at Mr. Peppers' request, coordinated that. I discussed it with his attorney when he got his Ohio attorney soon thereafter, and in at least two of my mini-trips through Washington D.C., I went by the Controller General's Office and talked with the people there.

Now, I understand that a Colonel Olson from the Air Accounting Finance Center has sent in a complaint in which he attaches to the first page of the Controller General's decision dated October 17, 1975 in which it says on the first page that this decision is rendered as a result of a requst from -- a letter

dated June 5th, 1975, Michael Rose, Esquire, Denver, Colorado. I have a mailgram statement that I received from Mr. Monzma who was in the Attorney General Office and whom I met with when I went to Washington and whom I talked with on the phone, attesting that at no time did I represent that I was a Colorado licensed attorney nor did he understand that. The only reason, as his statement in there says, that the Controller General's opinion says Michael T. Rose, Esquire, Denver, Colorado, as a matter of identification, its a routine format, it's routine on all their Controller General's decisions that they identify who made the request and it says I was doing this in behalf of Peppers.

I sent along an authorization from Peppers for me to make this request when I wrote the June 5th letter. The June 5th letter was not on any law firm stationery. It was just on a regular letter that I personally typed. The reason he put Denver, Colorado is, I put 953 Fillmore Street, Denver, Colorado as the return address. This is an address in which I was staying with someone rent free because of my new arrival and transient status here and I had to have some place to pick up my mail.

So, in other words, he put on the first page of the Controller General's decision, Denver, Colorado, for the sole reason that on my return address I had Michael T. Rose, 953 Fillmore Street, Denver, Colorado.

Mr. Monzma, who is the attorney with whom I interacted, further states that the authorization I sent to him with that letter from Peppers stated that I was given authority to represent him as an attorney-in-fact, and at that time he did not -- drew his distinction between attorney-in-fact and attorney-at-law, so he knew I happened to be an attorney and he knew I was licensed somewhere. In fact, I don't really recall where he said -- he knew I was an attorney, but he says in there that to represent one before the Controller General's Office, one need not be an attorney at all. They can have anybody as long as they've got authorization to do so.

So what I'm saying here, gentlemen, is that what all this comes down to is that we have a matter involving Federal military law in which I have acquired a knowledge, expertise, and which I was sought out by a gentleman from whom I received no compensation and which I have gone out of my way as the affidavit shows to insure that he was -- the responsibility for this matter was by an Ohio licensed attorney with whom I met at Peppers' request in Dayton, Ohio and also a Colorado licensed attorney.

All the relevant papers here say that at no time did they understand I was a Colorado licensed attorney. There was no need for me to represent that and I honestly thought at the time that, you know, it just never occurred to me that there was going to be a problem here. There occurred to me there could be a problem. That's why I went out of my way. I tried to go out of my way to avoid a problem by making sure that Peppers got a local Colorado attorney and a local Ohio attorney to assume responsibility.

Now, there's really two categories of complaint, gentlemen. I have just described one, and that has to do with military. The second has to do with partnership called Gulf Coast Properties Group. Now, as the affidavits in here will show, in the -- by the fall of 1975, my Legal Service Plan company, of which I was president and part owner, was making phenomenal progress. In fact, we had a contract, for example, with the Coors Breweries Workers Union out here which received some publicity in November of '75. The person who is solely responsible for financing the company, through my great embarrassment and humiliation, unexpectedly withdrew his financing for the company, and a breach of his agreement. You have in there a statement from the business manager of the Coors Brewery workers Union saying that with as much grace and straighforwardness and honesty as one could under the circumstances muster. I quickly went out to the Brewery Workers Union, explained to them that we lost our funding, we may not

be able to honor our contract beginning with January 1st, '76, and that I would try during November -- December to obtain funding to continue the company.

Now, I'm sure the relevance of this is not apparent at he moment, but it soon hopefully will be.

So during November and December, and a time which I had no income, I began trying to find investors in my company in order to salvage it and in the process of doing so, I met the --the first person I met with was a multimillionaire in Lakewood called Vince Dominico. With him as a CPA, John Amato, one Arnison, who is the author of one of these complaints, and also Gene Schroeder, and through may company, Barbara Ellis and Paul Roach.

Now I met with Mr. Dominico three or four times and as the affidavit states, contrary to what John Arnison alleges, at all times we discussed solely whether or not this multimillionaire was interested in investing in my company. At no time did we ever dicuss whether or not anyone would represent anybody on any legal matter. In fact, Mr. John Amato, the CPA-lawyer, states in there that he recalls that I went out of my way to state the first time that I was not a Colorado licensed attorney. In fact, gentlemen, it just now occurs to me that yesterday Judge Howard Kirshbaum reminded me on the phone that when I appeared before the Colorado Supreme Court in May of 1975 at a public hearing to discuss Legal Service Plan, he recalls, he says, or thinks he recalls, I even made the point then to the Court, Supreme Court of Colorado, "I'm not a Colorado licensed attorney" trying to make sure that -- to avoid any inference that I was.

So I now have a statement from the CPA-lawyer, an affidavit, John Amato, from Paul Roach and from Barbara Ellis, all who were in attendance at that meeting saying that contrary to what Mr. John Arnison claims, I have never, in any

of those meetings, said anything of the things that he claims.

Now, why would Mr. Arnison be saying these things? Well, for one thing, my company now has a lawsuit pending against Mr. Arnison and the financer who withdrew his funds, Mr. Ron Gallahan, who withdrew his funds from Group Legal Services of America. So in other words, what happened is, and I have a letter here so stating, I gave a whole stack of investment materials to Mr. Dominico, the multimillionaire who might invest in my company, and then I asked for them back and he wrote me a letter and said, "I'm sorry to say this, but John Arnison who attended the meeting took them" and apparently he gave them to what turned out to be his friend, Ron Gallahan. So Gallahan not only withdrew the money from our company, but he was treasurer of the company and also refused to give us the records.

Now I'm at the juncture, now, gentlemen, I know this is very complicated, but I assure you, and all these statements in here and affidavits the court -- that this is all absolutely true, is that now I've gone November and December without any income and I'm running out of money and I bought a house and I've got a car to support and so on, so I decided it's time to take the Colorado Bar.

Now, I called Mr. Charles Fredrickson, then chairman of the Ethics Committee of the Colorado Bar, as he verifies in his statement, and asked him what I could do, what were the parameters of what I could or could not do as an out-of-state attorney not licensed to practice law in Colorado.

I also have called Mr. Ed Felter, who is the Assistant Attornery General in Colorado who prosecutes unauthorized practice of law to ask the same thing. Subsequently, I've also checked with Mr. Rich Hennesee, and in substance what they all told me was that under the supervision of another Colorado licensed attorney, I could do anything short of going to court

and signing pleadings. Specifically, I could interact with clients, I could sign letterhead stationery of the firm as long as it did not contain my name on the letterhead stationery implying that I was a member of the firm; as long as I was careful to insure that everyone understood I was not a Colorado licensed attorney, but I was working for someone else who was taking responsibility for the case.

Now, I tell you this, gentlemen, to show that not only because of my concern about the ethical rules of these affidavits and statements show, pertaining to my legal service of my company, but because of my concern for insuring that there was no misunderstandings and that I followed -- I learned what the ethical rules were and I adhered to them. I went out of my way to consult with the people who I thought would know, find out what the ethical requirements in this state were.

Now, I decided since we -- Mr. Dominico decided not to invest in the company and a couple other people did, so then it was time for me to find some kind of employment, so I enrolled in the Colorado Bar course and took the Colorado Bar. We have an affidavit from Mr. Ed Bendelow saying that in December and January, I worked as -- under his supervision in his law offices for him and contemporaneous with that, but going through January and February, I also worked for the law firm of Carrigan and Bragg; Doug Bragg and Jim Carrigan. There is an affidavit so stating in there, and after I sent my resume to several firms, within about a three-week period, I had four job offers and I decided to become an employee of and associated with Saunders, Snyder, Ross & Dickson, and so since January 14th, I believe that's the date, of '76, I have been an employee of Saunders, Snyder, Ross & Dickson working half time through the Colorado Bar exam and working full time after.

Now, because Mr. Gallahan -- I was involved with Mr. Gallahan, who was the financer of my Legal Service Company, who went to Los Angeles and persuaded me to move out to Colorado in the first place. I was involved with him in

another deal, another venture called Gulf Coast Properties Group. This Gulf Coast Properties Group as general partnership in which Mr. Gallahan is the general manager and which I'm general partner and basically Mr. Donald Peppers who incidentally happens to be the same individual who sought me out in may of 1975 and about which the military is making a complaint because I assisted the same Mr. Donald Peppers, before he was living here in Denver and I was in Washington representing a Connecticut drug company for the Food and Drug Administration, got in touch with me and persuaded me to invest a couple thousand dollars, twenty-two fifty to be exact, in Gulf Coast Properties Group. Because Mr. Gallahan withdrew his financial support of my company, because I -- pursuant to contract, Mr. Gallahan was supposed to pay me some money from Gulf Coast Properties Group and then refused to do it, I began to suspect that there was some kind of wrongdoing with Gulf Coast Properties.

In fact, in January of '76, I received complaints from three different sources, two of which I never heard of, saying that they were general partners in Gulf Coast Properties Group and they had evidence of various kinds of wrongdoing.

Now, what it comes down to, gentlemen, is that all the members, known members of Gulf Coast Properties Group, and there are 18, they're Air Force Academy graduates like me and I'm the only one in Colorado other than Gallahan. Furthermore, I'm the only attorney and one guy is in Arizona, and they're scattered in various places. So Donald Peppers, the officer in Ohio, sent a letter dated June 6 to all the known partners of Gulf Coast Properties Group informing them of their plans, that various people had about how this partnership was managed.

Now, what it turns out, gentlemen, is, as you may or may not know, last Sunday in the Rocky Mountain News there was

a three-page, over three pages of a lengthy article explaining that what it all comes down to is this Mr. Gallahan has converted one to three hundred thousand dollars of other people's money in four real estate partnerships including my general partnership to his own uses. As of January I was receiving complaints that said "for years past we have never received a partnership agreement. We don't know who our partners are. Mr. Gallahan refuses to give an accounting of how he spent our money" and futhermore, he had sent a letter to everyone in November of '75, including me, saying that he had taken the liberty to sell the property owned by the partnership, which is down in Mississippi, and on his own initiative, without consulting with anyone in advance, take the moneys therefrom and to purchase land, a condominium in Massachusetts and land in Freeport, Colorado.

So, in other words, we had evidence that, coming to me, gratuitously and stuff I've found out on my own that this guy Gallahan converted our moneys to his own uses. It turns out he's being investigated and has been, that is to my instigation, on my own initiative, in January by the Securities and Exchange Commission and now by the District Attorney's Office, and they now have voluminous evidence that Gulf Coast Properties Group doesn't have any property in its name, but it's in the name of Gallahan and Gallahan's father.

The relevance, gentlemen, of this is this: I have in here a stack of letters that I have received as of February 1st, '76 from my general partners to me or from people to other -- some partners to other partners complaining about the way this partnership is being managed. We are not registered in the City and County of Denver, which is a criminal misdemeanor by statute, and so forth, and in one of the letters, Peppers' proposals, and you'll see in there that since I'm the only general partner in Colorado and since I'm associated with a law firm and he states in there, however, I'm taking Colorado Bar, meaning that I'm not yet amember of the Colorado Bar, proposes that everyone

hire my law firm with me to represent this group.

Now, the allegations here are, gentlemen, that our law firm in fact has been retained by 12 or 13 members of this partnership and in fact we've been representing for about two months now this partnership, and the person against whom all these complaints are, in other words, the person under investigation by the Securities and Exchange Commission and by the District Attorney's Office, his attorney has sent to you these documents about Gulf Coast Properties Group, presumably complaining that since I have signed documents in here on letterhead stationery and whatever, that I've been engaging in the unauthorized practice of law. So in other words, none of the people that our firm represents are complaining. In fact, I have lots of informal, and I've gor a couple in there, little letters from people saying things of a very personal nature.

So what it comes down to, gentlemen, is this: Is that I was acting as a general partner in taking the initiative, after I had been contacted and I've received letters that I have set aside in there showing that my partnership had been with this man. I took the initiative to assist in organizing the general partners and I sent a letter dated February 24th, 1976 to the members of the Gulf Coast Properties Group of which I knew. I didn't know all of them at the time and I'm not sure we know all of them, and invited them to join with the action I had already taken. In other words, I had already gone to the Securities and Exchange Commission on January 8 and there is a letter in there from the SEC verifying that, inviting them to join me and three others who had already decided we were going to do this, in taking of Mr. Gallahan. I outlined the complaint. Now the problem here is, it's susceptible to interpretation or by definition, it's a letter of solicitation to these general partners.

I called Rich Hennesee who I understand is the staff attorney for the Grievance Committee and described to him this problem. I have confirmed yesterday over the telephone this con-

versation with him. At the time I described the problem in the abstract, however, and in essence, what it came down to is, I asked him could I send a letter or could a friend send a letter or an attorney send a letter inviting people to join in on an action. If the person sending the letter is also a general partner, does that give a privilege to the general partner to do something that would otherwise be impermissible solicitation and he said, and he verifies yes, today, that if it were done right, yes, meaning if it were done right as he explained to me in our original converstion, it had to be clear to the people who were receiving the letter we are not under any pressure, this is just an invitation; that the person sending the letter was also a general partner, so therefore there was a possibility of conflict of interest and that it was up to them to decide whether or not they wanted to join in the action that had aleady started.

Basically the only motive being that it minimized expenses and maximized effectiveness. Nobody, including me, has enough money to do this alone. I don't know any small group -- everyone except me is in the Air Force and they're just getting a certain amount of money from the Air Force salary.

So at any rate, the net result of this was that most of the members of the Gulf Coast Properties Group, in fact all I believe except one, that we knew the identity of at that time decided to join in this action. I have included in here letters, gentlemen. What it comes down to is that letters that you have that were sent to you and that were selected out by Gallahan's attorney are letters that on the face of it give a meaning which is not the same meaning or context that will appear from reading the background letters here that were sent by me or to me or by Mr. Peppers and so on.

For example, Mr. Peppers in his June 6th letter, and he affirms that by affidavit with an attached copy of the letter affirms that he advised everybody that I was not a Colorado licensed attorney and so on, and that I was associated with the

law firm and so on.

Now, one of the documents from Mr. Peppers -- I mean one of the documents that you have been given is an authorization and I think it has a D at the top, which the partners of Gulf Coast Properties Group, who hired Saunders, Snyder, Ross & Dickson to represent them, all these people have signed this statement and sent it in. Mr. Peppers attests in his affidavit, I mean it's true, Mr. Peppers took the initiative to write out this authorization and without any consultation with me, sent it to everyone and that's why it happens to say Michael T. Rose and gives my home address, but the authorization says that it's hiring the law firm -- the law firm to represent them and all moneys for the Gulf Coast Properties Group or these partners have been sent to the law firm of Saunders, Snyder, Ross & Dickson, and put in the account. In other words, what this comes down to, being the only partner in Colorado, and all these people scattered all over the world, we've got one guy who has $6,500 in it, I took the initiative after three people contacted me and I knew there was evidence of wrongdoing to assist Peppers and a guy named Al Sellers and a couple other people to mobilize our resources and they hired the firm, they paid the firm.

Now, when I got Gulf Coast -- when I decided that I thought it might be a good idea for Saunders, Snyder, Ross & Dickson to represent Gulf Coast Properties, I followed my firm's formal procedures and that is, I happened to go to the head of the law firm who is Mr. Glen Saunders, and told him about this and in his words, he said, "Sounds like a piece of legitimate business to me." So I asked him who should be the attorney in charge of it and in fact, there was information that the partnership law that I myself didn't have, which I in particular wanted to consult with somebody to get more information, and he told me that the person most knowledgeable in the firm, the attorney that would be in charge of this, was Mr. Willard Snyder.

Now, since that time on many occasions, several occasions, I don't know how many, but Mr. Snyder and I have at one time or another discussed this. I initially went to Mr. Snyder and proposed to him a strategy which in effect he said was the strategy that he agreed and that was two stages. In fact, I said in letters to the members of Gulf Coast Properties Group, what we do is to follow two steps. We would obtain information about the status of the partnership and we would use the state and Federal agencies to the extent we could to save us money, so I even before any of this happened, before anybody else got involved, got in the SEC, to begin a formal investigation which is now pending, and then I went over to the state SEC and to the District Attorney's Office and the Colorado Real Estate Commission and all of them are now still investigating this group.

So my strategy was, which was agreed, the strategy that was agreed on and what I informed them, "First we'll get all the facts and we'll use the government agencies to the extent feasible to determine what the facts are. Once we learn what the status is, everybody will be notified what the status is and then we'll decide what our alternatives are."

So there's only three we can rescind, or whatever. So what it comes down to, gentlemen, just to summarize, is that contrary to what it seems, just in the vacuum of just reading these documents which Gallahan's attorney had selected out to send here, I was not acting in my self-interest or solely my self-interest in this, I was acting as a general partner who as a practical matter was the only available person, the only person in Colorado that could take any initiative to help get back what has turned out to be the conversion for almost a year now of approximately $100,000. Well, K-1 Form says its $292,098. We don't know how much money is involved, we don't know who our partners are, it's not registered. All we know is that the funds are no longer in our name and this Rocky Mountain News article, and it's in there, shows that too, but the funds

since last summer have been in the name -- and property in the name of someone else.

Okay, now, finally gentlemen, I want to comment on another matter because I think that it is relevant here, at least goint to -- I have addressed the merits of all these documents. I have -- excuse me, I've missed one thing unintentionally and that was the letter from me to Colonel Sabar, last week or two weeks ago, which I sent to him asking for an interview. I wrote to Colonel Sabar asking to be interviewed so that I could join the Judge Advocate Reserves.

Now, basically, gentlemen, I have an interest in military law and that's what I said in the letter and I just thought if I'm going to be living here in Denver, it would be nice to be in Reserves and have my hand in what's going on. Colonel Sabar used to be my instructor at the Air Force Academy.

The letter starts out, in a friendly tone, saying "Perhaps you recall, in 1968 you were my instructor at the Air Force Academy" and then in fact I did say "Obviously now I'm a civilian attorney practicing law in Denver after having served a year and a half in the Air Force." I was not attempting to represent to Colonal Sabar that I am a Colorado licensed attorney or that I am on my own practicing law. I see that that is the inference that one may take from that, and apparently one of the claims that he did take from it, but it was just really an unfortunate choice of words. It was a generic generalized description of what I'm doing these days. In other words, if my mother asked me what I'm doing, I tell her I'm practicing law in Denver and it's only in the attorney-client context or in which I have any kind of legal dealings or business dealings in which it would be relevant that you specify that I'm not a member of the Colorado Bar and that I'm working under the supervision of Colorado licensed attorneys.

Now, I've taken precautions to avoid this inference. For ex-

ample, this business card is what I show to people and it says on there that I'm licensed only in Pennsylvania and California. Furthermore, I'm not on the letterhead of the law firm stationery. I'm not on the outside plaque outside the door. I've consulted with somebody about and been shown samples and approved samples to order as invitations to announce that I have joined Saunders, Snyder, Ross & Dickson, but I have not even had them printed up yet, to wait to see if I passed the Bar exam and I was going to be admitted to the Bar.

Of the 30-something statements I have in here, I think every single one of them, if not every single one of them, almost every single one of them, the people who write the statements attest that they have personally heard me say that I am not licensed to practice law as an attorney and they they have never known me to do anything, and I have not ever done anything that was not under the supervision of another Colorado licensed attorney and that was not under the supervision of another Colorado licensed attorney and that was even Mr. Bendelow or Mr Bragg or Mr. Carrigan or a member of Saunders, Snyder, Ross & Dickson.

Q (By Mr. Cisneros) Mr. Rose, do you have to be practicing law in Colorado to be admitted to the SJA here?

A No. I was just about to say that. Furthermore, there's no possible motive for me to have misrepresented this to Colonel Sabar. I only have to be a member of a state bar. In fact, the Air Force regulations, and I include them in there, require that as part of my application, when I would send in my application, that I would show Colonel Sabar -- excuse me, that I would state in an affidavit the chronology of all my legal experience and state what bars I'm admitted to and when. So I wasn't trying to tell Colonel Sabar and I have no possible motive or no self gain for telling Colonel Sabar that I was a member of the Colorado Bar and it just made no difference whatsoever and I don't have to be a member of the Colorado Bar. All I was doing was, really it was a freindly letter. Now,

I've been told by two sources, one of which is in a statement and the other who tells me that he wishes to remain anonymous because of a relationship with him, that it turns out that Colonel Saber has had some antagonism from me for a long time.

Now, let me explain that as an editor of New York University *Law Review*, I directed a two and a half year $18,000 study of the five service academies and their disciplinary practices which we published, got a lot of publicity. For example, you may have heard the silence at West Point. Just last week I won a U.S. Supreme Court decision five to three and it was in the appropriate page of the *Washington Post* and last Thursday evening it was on a national ABC news giving my opinion as to why West Point now has a new cheating standard.

So what I'm saying, gentlemen, is that one of these statements -- well, one last fact I want to tell you. No one on this committee I'm told by Justice Groves knows, but Colonel Sabar also took the initiative to send with his complaints an October 18th, 1974 Rocky Mountain News article about me in the *Gensor*, which Justice Groves did not forward because he considered it to be irrelevant.

Now, what I'm saying, gentlemen, is that I don't have very many enemies in the world. I'm not trying to say that I do, but I have two categories at the moment and one are certain officials from the Air Force because of an ongoing two or three or four-year controversial thing that is stemming from this *Law Review* article which has gotten a lot of publicity and just last week the Supreme Court decision and so on has continued and the second thing, now here's Mr. Gallahan and Mr. Arnison who are defendants in a lawsuit who were claiming things, like in that letter than Mr. Arnison wrote which -- claiming that on two different instances, I solicited business from him in which all the other people in those meetings had said in statements that they have now made that they heard nothing of the such.

Now, one specific thing that I omitted that I should comment on now, Mr. Arnison claims in his letter, in his handwriting there, that on December 15th, 1975, I met in his house with Paul Roach and William Secord, and his claim is .hat during the meeting I solicited or asked him to, or tried to talk him into letting me represent him with regard to problems he has with the Coors Company. Now, both these other gentlemen plus me that were at this meeting recall and so state and they've got it in their statements that nothing was said of the sort in there. Mr. Arnison called me. He told me that Mr. Dominico, this multimillionaire out in Lakewood, the one I had just gone to see if he would invest in my company, to save it or salvage it, would probably not be able to make a decision about my company, whether he'd invest in it in adequate time to salvage the company because the real decision maker is John Amato, the CPA-lawyer, who was in California and wouldn't come back in time. He said, "Why don't you come to my house, Mike?" This is John Arnison speaking. "We'll talk about maybe I would like to invest in the company" and "Furthermore," he said, "if we don't invest in your company, I have problems with the Coors Brewery Company up in Idaho and it's a breach, an inducement to breach a contract problem" so he described it to me and he says, "Come in here and we'll discuss it too." So I did think I was going to Mr. Arnison's house on December 15th at his invitation to discuss both these, because I was at the juncture if I didn't get funds for the company, I'd have to earn a living and I'd be practicing law. That's the way I'd earn a living, but I would do it as somebody's associate or for all I knew I'd be going up to Idaho.

Like I went to Washington for two weeks representing the Connecticut drug company on one piece of litigation, a military injunction against the Food and Drug Administration and I was admitted by the Federal Court just for that case. So, in other words, even my going to discuss this was not any wrongdoing contemplated on my part and Mr. Secord says in there -- this is the first time I met Mr. Secord. Mr. Secord says in his statement: I tracked him down at Fairmont Hotel in San Francisco.

What I'm saying is, gentlemen, some of these things I've had less than 48 hours to respond to. That's why in my presentation I was a little bit disjointed, but he affirms that-he even recalls me telling him when I first met him I'm not a Colorado licensed attorney and I'll tell you, I can't tell you how many times that I've said that and I have a law clerk in my office who has got an affidavit there that he recalls overhearing me, and I didn't even know this, saying on the phone, "No, I can't do this, I'm not a licensed attorney" or words to that effect.

So at any rate, those are the documents. Now the last -- those are -- my comments on the documents. The last thing I'd like to say, gentlemen, which casts doubt on the credibility of some of Arnison's statements here, not only -- for one thing, William Secord was at the meeting, says, and I didn't even know, he told me over the phone and he says in his statement Arnison has repeatedly lied. Amato, who is a CPA-lawyer says in a letter here that the documents, investment proposal, that I entrusted him to go to Dominico were stolen in effect by Arnison and given to Gallahan. That's why we have a lawsuit. I know this is a probably, maybe unecessarily complicated, but the final thing I want to say is this: During the last two to three weeks, certainly within the last three weeks, I've had the following things happen to me contemporaneous with Mr. Gallahan's appearance before the Securities and Exchange Commission. I've had two phone calls, long-distance, warning me to be careful of my physical safety. I've had four different ads in the classified ad section of the Denver Post advertising the sale of my Datsun 260Z car for the ridiculously low price of 3250, not putting my phone number -- in fact, I've got those in there too -- not putting my phone number, drop me a line, giving my address, nights after 9:00 p.m. There's another ad that says "Wealthy retired lawyer will do legal work cheap. Call Mike" and gives my law firm number. There's another ad that advertises that I am running a child day care center. 100 something pounds of hind quarter of a cow were ordered to be

delivered to my house from a meat factory. Now, the person who took the order, he's formerly a Denver policeman named Richard Perez. He told me he spoke for 20 minutes with the person who ordered the meat. I suspect that it was Gallahan, the guy that is our managing partner who now the evidence shows has converted all this money to his own use.

I called Gallahan, he answered the phone, I called Perez and asked him to call Gallahan. Perez called me back and said, "I'm positive the voice I heard on the other end is Gallahan."

The former Denver policeman, I talked to him for 20 minutes. I've been around these things and I'm positive that the voice, somebody called me up and said that my suit was ready from the cleaners. I mean from the tailors. And finally somebody arrived at my house at 10:30 p.m. one Monday evening while I'm hearing on the phone a warning to be careful of my physical safety.

Some guy arrives from a house cleaning company to say that he had been instructed to arrive at 10:00 p.m. to discuss with me arrangements to clean my house.

Now, contemporaneous with this, you have a mailgram there from Peppers in which he called me last night and he says, "Mike, I've been thinking about this." The last conversation I had with Gallahan, now that the SEC investigation is taken care of, "We're going to get Rose."

I'm saying now, you received all this stuff, you've got the statements from Gallahan's attorney, from Gallahan, none of the members of Gulf Coast Properties Group were complaining here. You've got statements that turn on my credibility versus Arnison's and if you read this 30-some statements saying people have known me, reputable people in the community,

like one of the deans at DU Law School, that they have known me for years, that they have never heard of anything or seen me do anything to cast doubt on my integrity and then you've got a guy saying I'm completely a blemish on the legal profession and so on. That's exactly what he says.

Anyway, gentlemen, the final thing I'd like to say is, Justice Groves informs me that other materials that he deemed not relevant to this, making further allegations against me which I don't even know the identity of have come from even an unknown source. So suddenly what I'm saying is that Gallahan and his group knows that, you know, that I'm being considered for admission to the Bar and now they've seen fit to orient this stuff here.

Now, the last thing I'd like to say, gentlemen, is that there have been several specific occasions in which these affidavits and statements show that I've gone out of my way to insure that I've complied fully with the ethical requirements for being admitted to the Bar or for law firm practicing law or whatever. As two or three specific examples: One of the affidavits in there show that an army lawyer out in California sent to me a case for recovery for about 500 prospective plaintiffs, recovery of back pay from people who were in the military and wanted to know if I'd take it. So we evaluated it in our firm following routine procedures and decided we did want to take it and decided the terms upon which we would take it.

Then this lawyer back there in California attests that I instructed him that, "Look, you guys have got to organize the plaintiffs. All we do is -- you asked us, we're going to take it and here are our terms and you organize it" because I know and I even took the time to look up and to give to Mr. Saunders a copy of the Colorado Bar Association ethical rules or the Supreme Court of Colorado ethical rules as to what extent a law firm cooperates with a class action suit.

Now, secondly, Mr. Al Zinn, who is Gallahan's attorney, called me or he had someone call me, in other words the same people who sent all this stuff to you, and asked me to meet with him to discuss the problems with my Legal Service Plan Company and the Gulf Coast Properties Group, and a third problem.

The house that I bought from Gallahan -- that I bought in July, it happens to be one formerly owned by Gallahan, the guy that's financing my company. I have an affidavit from Doug Bragg there saying that I asked him to be my attorney in that meeting. We did have the meeting and that he in fact did go to the meeting and he was the attorney representing Group Legal Services of America and that during that entire meeting, in other words, the only interaction I've had with Gallahan's attorney on this at all is in a capacity in which I had an attorney representing -- participating as a lawyer and I was acting as principal and he says throughout that I was making policy settings for Group Legal Service of America and Gulf Coast Properties Group as a general partner and also wherther or not Gallahan is going to get the stuff he's left in my basement and my garage for now some nine months.

Now, the final thing is, gentlemen, is that both an attorney named Michael Buttes and an attorney named Richard Dally and Ed Felter, who is the Assistant Attorney General in charge of prosecuting, among other things, prosecuting under authorized practice of law, have attested in there and I contacted them, I contacted Mr. Felter to say I'm president and stockholder in Group Legal Service of America. This is back in March of '76, right after the Bar exam. "We need to bring a lawsuit now against Arnison and against Gallahan because they won't give us our corporate records and we can't fill out our income tax status and so on. Is it permissible for me to represent this company pro se or must the Colorado licensed attorney represent the corporation.

The conclusion was, the Colorado licensed attorney had to represent the corporation. My only motive for wanting to represent it pro se is the company had no funds and if we got a Colorado licensed attorney to do it, I, Mike Rose, would have to pay for it out of my own pocket. That is in fact what we've done.

The company hired Richard Dally and in fact, he has brought the lawsuit. So what I'm saying is, every time that there's been a juncture in which there is either as a principal or as an associate in the law firm in which I am an employee and working under other people's direction, some ethical problem that might arise, I have these statements of support, been sensitive to it, and I've gone out of my way even at cost to me, out of my own pocket, I wound up having to hire this attorney to bring a lawsuit when, you know, if I can argue and be paid 2,000 a week really by Connecticut drug company to represent it against the Food and Drug Administration in Federal Court, I suppose I could have gotten a writ of replevin in a Colorado Court, but instead I wound up paying my own attorney money to get an attorney because it's required by the ethical rules that I do so.

The final thing is, gentlemen, you know, what's at issue here, I guess, is my integrity or my character and fitness to practice law before the State of Colorado. I do not think I've been appointed, graduated from the Colorado Air Force Academy, become a member of the California, Pennsylvania Bars and wouldn't have a stack of 30-something statements by virtually everyone who's dealt with me except my two groups of adversaries attesting to my having moral standards and integrity above reproach if there was not merit to that proposition.

So all I can say is that, you know, between the company collapsing and taking the Colorado Bar and finding a job and becoming a new member of a law firm as an employee and trying to find a job and becoming a new member of a law firm as

an employee and trying to wind up my company affairs and so on, I've had a very complicated life and it's been very overwhelming and I haven't -- you know, in retrospect, there have been some things that I might have worded differently or might have said differently, but I've always, this evidence will show, I've gone out of my way to make sure that what I was doing was the proper thing to do, in accordance with the Bar Association ethical rules and so on.

Q (By Mr. Cisneros) Mr Rose --

A There is one other thing I should say, gentlemen. As a result of -- for the last six months I've been in a continuing stream of controversy, the company collapses, and I want to tell you that as a result of this controversy, this morning I've lost my job. So I'm no longer employed by Saunders.

Q When were you admitted to practice law in California?

A I was admitted -- I'm not sure. I'm sure it would be on my application, but that was in 1975. I was admitted in Pennsylvania in 1973.

Q You took the Bar in California?

A Yes, I did. I took the Bar in California a year ago.

Q How long did you live there?

A Well, I only lived in California really not more than four months. See, in an eight-month period of time I moved from New Jersey when I got out of the Air Force to Washington. I was immediately hired by the Connecticut drug company. I was hired by the Connecticut drug company because of this controversy n the Air Force. The president of the company saw me on CBS and flew me out and I took the job. So I was seven months in Washington. Then I decided, okay, I'm going to live

now in California. So I went to California about November 1st, '74 and I stayed there through about April 1st, '75 and --

Q Now, you intended to, when you took the Bar, practice law in California?

A Absolutely. That's the only reason I had gone through all that and furthermore, I had job offers from two firms. I mean, they were kind of -- by the time they invite you back three or four times and were talking seriously about it, so in other words, it was all but a job offer.

Then Gallahan whom I had never met showed up and offered me this job out here.

Q How long have you been in Colorado?

A Well, I came here for about three or four days in March and then I came here from California in April of '75 and it wasn't until June, in other words, I didn't have my belongings here until June and I spent at least half the time out of state. In other words, I went, for example, to a conference, American Bar Association conference in New Orleans in May of '75 on prepaid Legal Service Plan, and then I went all over California -- in fact, during May, here's what I did in May. It's just now coming back to me. I visited Legal Service Plans' operation in Washington D.C., Columbus, Ohio, Northern California, Los Angeles, and went to this three or four or five-day conference in New Orleans.

So what I'm saying is, I drove my car out here, parked it, talked with my new employer. My belongings weren't out here yet. He wasn't charging me any rent. I was living with him. Put my clothes there and I was going all around.

So the only reason, you know, instead of having my -- you know, I used his address as an address, to get my mail, is what

it comes down to.

Q You've been working for the firm how long now?

A Well, I've been working with Saunders, Snyder, Ross & Dickson since January 14th, '76. Since mid-December of '75 through January 14th, I worked simultaneously for Carrigan and Bragg and also for Ted Bendelow.

Q So the February Bar was the first opportunity you've had to take the Bar?

A Well, no. I've had an opportunity in the summer of 1975, but not only was I running around to all these 15 states and too busy to do it, but I intentionally did not take the Colorado Bar. I just didn't want to be closed whatsoever to practicing law while I was running the Legal Service Plan.

One thing I forgot to tell you, gentlemen, I also got in touch with Charles Fredrickson, as the evidence shows, and told him that, the fall of '75, that now I was contemplating taking the Colorado Bar and basically I was having misgivings about the security of my company because I was having doubts about whether or not this financer, his payments coming in on time, is what it came down to.

I asked him if it would be permissable as a matter of bar ethics for me to be president of a company which was a Legal Service Plan Company and practicing law in Colorado as a common licensed attorney at the same time, if I were not giving legal services to anyone asking from the Legal Service Plan. He steered me to Mr. -- I believe it's Paynter, who is the new Ethics Committee chairman in Colorado Springs and you have a letter from him dated November 8th, '75 to me saying in response to my inquiry he advises me that I could as a Colorado licensed attorney practice law and be president of the company at the same time as long as I was not providing services to the members of the Plan.

So, in other words, again, I was sensitive to the issue and I was trying to decide whether to take the Colorado Bar and at that time, then I was still assuming my company might be in progress, but I was having some doubts. That's why I inquired, but then the company collapsed and I said well, my only alternative now, I don't want to go back to California. I like Colorado better, so I'll take the Bar exam.

Q Do you have any idea why you were laid off, other than the publicity?

A Well, yes, I do, and I would explain. Mr. Snyder here, of course can say also, but in March, when I joined as an associate of Saunders, Snyder, Ross & Dickson, first of all, let me say that I think Mr. Snyder would be the first to tell you it has nothing to do with any misgivings about my integrity or fitness to practice law in Colorado, but Mr. Saunders, who is the president of the firm, told me when I came to the firm that in effect "We have a family here and we help each other out" and this sort of thing. And I really took that seriously and when the Bar exam was on, I then came and said, "Listen, I've got my own personal problems. I've got this company and it's 20,000 in debt and I'm president of it. We've got to wind it down and we can't get our corporate records." I said, "I found out that a Colorado licensed attorney has to be the attorney of record to sue in behalf of the corporation" and asked Mr. Saunders if an attorney in the firm could do it. "Yes, Bill Kirven will do it." So I went to Bill Kirven and Bill said, "Okay, Mike, you're like a research assistant and I'll review it, edit it, approve it and so on." When he wrote the complaint out, Mr. Saunders read it, unbeknownst to me, he expressed to me unhappiness that -- what it came down to is nobody really realized how much of my own work I had to do. Now, he said, "Just get that out of the firm" and in fact I did. I took that then to Richard Dally so my stance was, they warned me, "Now, if you get involved in personal things at the expense of the firm any more -- " in effect I'm fired. In fact, Mr. Saunders walked into my office and

told me, "You're fired" or "We're going to terminate you" and then we discussed it afterwards. That was in March.

So what I've done, in my judgement, since then, gentlemen, is, I knew I was on probation. I knew I had these personal problems, but I tried to keep them out of the firm and in fact, until today, I've kept them out of the firm until this has come up and what I did was, about three days ago when I was first notified of it, I told Wayne Fowler my problems. I'm under obligation to tell my employer, but I got enough problems without confusion in my firm, so I went to Wayne and said, "This is the situation. Can we keep it between you and me?" And he made the judgement.

Now, this morning Mr. Saunders for the first time found out that I was here and he has not heard any of my defense, no one has heard, now Mr. Snyder has, my defense, or seen any of these documents. All they've seen is the documents that you have and the documents that you have, all I know is Mr. Saunders has told me that my method of doing things and their method of doing things are not compatible; that there's no animosity here; that he says he has great respect for my talents, but in essence, I'm qualified in other things.

Now, I might add, gentlemen, that as the record shows, when I was warned of this in March, I even went so far, I mean, as the time sheets show, I put in over 230 billable hours in my firm in one month, where Mr. Fowler was telling me it's 160 or 180 average for an attorney. In other words, I had my personal problems, but I took them out of the firm because I was warned to do that, and I kept up my duties, but at the same time I was just working around the clock. I mean, I've got this company collapse and I've got the income taxes to answer and so forth.

So anyway, all I know is, I'm sure Mr. Snyder would be more privy than I was. All I know is Mr. Saunders walked in

this morning and asked me to come to the office and there were three or four people there and they told me I was terminated and the only other clues I have is what I've already just got through stating.

MR. CISNEROS: That's all the questions I have.

CHAIRMAN HOUTCHENS: Any other members of the Committee have a question?

MR. STUBBS: I think I'd like to hear from Mr. Snyder, if he would like to say anything.

MR. SNYDER: Well, I might just say this: Mike Rose was employed by our firm in the middle of January of this year and it is correct that he was terminated this morning.

I would just add a little bit to that and that would be this: I think he has very, very considerable ability, but somehow or other, he has not fit into the firm. We had a lengthy discussion of problems and methods of proceeding in the middle of March, with Mr. Rose. He has his own way of doing things and I don't say it's right or wrong or anything like that, but it's different than the way we do things in our firm and the understanding had been at that time there was going to be a change in ways.

The observation has been that fundamentally there has not been a change in ways and consequently the termination took place and that was this morning. That's about all I have to say.

MR STUBBS: Would you and other members of your firm be willing to recommend Mr. Rose for admission to the Colorado Bar?

MR. SNYDER: I think so. We're not prepared to employ him ourselves. As I say, different people have different ideas

how to proceed. I just don't think he works out for us. I think he's something of a crusader, just my personal opinion, and I have nothing against crusaders except that we have business to do in our firm and we've got our way of doing it and we intend to do it our way and not his and the thing that disturbed me, speaking of my own personal opinion, is that notwithstanding the fact that the thing was taken up with him very extensively and the time of numerous members of the firm was spent upon the subject, he did not change his ways and consequently we have come to this impasse.

MR. STUBBS: I don't feel free, Mr. Snyder, to interrogate you closely. I only want you to say what you feel free to say, but have indicated that his ways are different than yours and it would be helpful to me if I knew why they were different, in what manner and what respect they differ. But again, I'm not urging you to violate any confidence and I only want you to say what you feel completely free to say.

MR. SNYDER: Well, I don't know that I can add too much to it. I would generally say that his approach to the problem is a very personal thing. It takes on the personal character rather than the objectivity that I seek; speaking only for myself, and in this particular, his approach is entirely different and I believe in objectivity and believe in it strongly.

MR. CISNEROS: There's nothing about the integrity of Mr. Rose?

MR. SNYDER: No. I'm not questioning his integrity. I'm simply saying his approach to the problem is inconsistent with ours.

MR. STUBBS: Thank you, Mr. Snyder.

CHAIRMAN HOUTCHENS: You believe that the people who have complained about your unauthorized practice of law

have some personal vendetta against you and that that is the reason they say that they interpret, for instance, a letter from you, "Now, I'm a civilian practicing law in Denver"? That was a letter -- I have reference to a letter addressed to Colonel Alan Saber dated April 9, 1976. You believe that because he didn't like you personally or he had some personal grievance against you that he elects to interpret that as your telling him that you are a Colorado lawyer?

MR. ROSE: Sir, let me say that I'm not trying to -- I mean, I'll answer your question. I'm not trying to focus on what I have done or not done. So basically Colonel Sabar's or anyone else's motivation as to why they reported me is for the most part irrelevant. Their motivation as to whether or not statements they say, I'm talking about John Arnison, that I did such and such, and I say I didn't do such and such, motivations, is relevant to whether or not his statements are credible.

But anyway, I don't -- I have my own opinion that Colonel Sabar, who I'm told now has kept a file on me, sends a newspaper article that's irrelevant, two years old, along with this, that he is a career officer who -- that's the only officers that get assigned to the Air Force Academy as instructors, that he, I've been told, that by someone who used to work for him, that he feels I've been disloyal and so on and so on, and my personal opinion is that that has motivated him to send this in.

However, let me emphasize that anyone reading the statement I'm a civilian lawyer practicing law in Denver could infer exactly what Colonel Saber said and I'm not saying that I did not use the wrong choice of words, I'm saying I have not been practicing law in Denver, out of another attorney's supervison. I was not trying to represent that to him. I had no motive for doing it. I was just giving a generic generalized description of what I'm doing these days. In fact, I'm practicing law, but I'm doing it under another attorney's supervision.

Now, I have a guy named Joe that I just met the other day, told me he had a problem with a deed and I was talking with him and he said, "What do you do?" And I said, "Well, I'm in this law firm" and I said, "I'm not a Colorado licensed attorney" and I said, "Here's my card. If you want a question, feel free to call" and he called.

So what I'm saying is that these statements will show, gentlemen, that I have gone out of my way carefully to try to avoid any misrepresentation. I've never said that I was a Colorado licensed attorney. I have never meant to imply that I was an autonomous attorney practicing law here. That statement is susceptible to that interpretation and I wholeheartedly concede that. I made a mistake in saying that. It was not the context. I was asking for an interview. I wasn't asking for anything else. I wasn't in an attorney-client relationship with him and I wasn't trying to get any business from him and I knew that he was going to know by affidavit what Bars I was admitted to and what their chronology was of my legal experience.

At any rate, I guess that's a lengthy answer to your question, but I think personally from what I know of Colonel Saber, that that was his motivation, the report made, because he, in sending in the article and so on, because he is offended by me. That's irrelevant to the merits of what I did, you know, and I used the wrong choice of words. That's all there is to it.

MR. STUBBS: Mike, on the case that you just referred to where somebody asked you about a deed, you gave them your card and you said something about "You may call me" and he did call you?

MR. ROSE: Right.

MR. STUBBS: What did you do for him and how did you handle it?

MR. ROSE: Well, to be honest with you, this -- well, I'm being honest with you throughout this, but this is this week and when he called me, he wanted to talk and I said -- I was in the middle of this. I had just been given these charges and I said, "I can't talk to you right now. Call me back tomorrow" and he hasn't called.

What I would have done if he had called back is to steer him -- I would ask Mr. Saunders or somebody who he should talk to. There's lawyers all up and down my hall, so I know I'm not the attorney, the others are the attorneys, and I take assignments from other people. However, let me say also though, that I mean, like here's a typical interaction.

Wayne Fowler assigns me something and he says, "Now, you call (so and so) at the hospital and ask what these facts are or if they returned this stuff." So I call them up and say, "I am working for Wayne Fowler," so on, so what I'm saying is, only after checking with Charles Fredrickson, chairman of the Ethics Committee, as verified by his statement and Ed Felter, and later Rich Hennesee, did I -- I wasn't going to do anything until I found out what I could or couldn't do and I was under the impression that I could interact with clients and I could sign letters on law firm stationery as long as I was not on the letterhead of the stationery; as long as it was clear that I was operating under another attorney's supervision and in fact, what I'm telling this Committee is that is what I honestly believe I've been going the entire time I've been here in Colorado.

MR. STUBBS: I'm curious about another point. You referred to Yablonski, the man you referred to as the managing partner of the partnership.

MR. ROSE: Gallahan.

MR. STUBBS: Gallahan, excuse me.

MR. ROSE: He's not an attorney.

MR. STUBBS: You've referred to him, I believe, as the managing partner. You've referred to yourself as a general partner. Now, is that correct?

MR. ROSE: That's correct.

MR. STUBBS: And what's the distinguishing --

MR. ROSE: Well, the reason I used these terms, sir, is that we're not really sure what we have. You see, we sent Gallahan our money and in my contract, I had a two-page contract, I was leery of sending money in a partnership in which I don't have an agreement. However, this guy was an Air Academy graduate and a guy I greatly respect. Don Peppers was number one in his class, highly recommednded, and this guy Gallahan just put together the Gold Rush, a 3.2 nightclub out at Sixth and Sheridan. In fact, he had a lot of things that were at least temporarily successful, so I told Peppers of my misgivings so I put a clause in my agreement that if within 30 days I did not get a partnership agreement, I would get my money back. None of the other people did that.

So in this solicitation material, sometimes it was referred to as a joint venture, sometimes as a general partnership, and he referred to himself as managing partner, like on the cover of the booklet.

Well, I said a joint venture, do we have a limited partnership or general partnership and what are the terms. The fact is, under a general partnership, my understanding is that all partners have co-equal rights to manage the partnership and furthermore, no partner can receive compensation for any services they provide for the partnership in the absence of an agreement, which Gallahan has been helping himself to.

So I refer to him as managing partner because de facto the money has been sent to him and he's been claiming he's managing partner. The K-1 Form for 1974 sent to all the partners including me says we've got a general partnership. That's the only evidence I've got of what we've got. I know it's a partnership because it's referred to as a joint venture and general partnership on stationery, so at any rate, what I started doing is saying, "Look, I'm undeniably a partner and a general partner so I want to see a record. I want to copy them, have an accounting of how the money has been spent."

So to this day all that's been denied. So what I'm saying, that mobilized me, these other people, that we've got a whole year without an agreement -- excuse me, sir, what really precipitated this was in November of '75, and I have a letter in those documents, in November of '75 Gallahan sent a letter to everyone saying, "As managing partner of Gulf Coast Properties Group, I've taken the liberty to make a major decision for the parnership." What he did is sell out all our property in Mississippi and he claims to be buying stuff in Perry Park, Colorado and Manzanillo. It turns out he put it in his and his father's name and it's been that way six or eight months.

What I'm saying, I'm not sure what the legal relationship is and it was kind of confused so I just figured that these agencies would sort it out for us at their expense.

CHAIRMAN HOUTCHENS: The letter to me, like your letter to Hargrave, on February 24 of this year, in which you, without the knowledge of your background and without the knowledge of the fact that you were admitted in other states and that you were with the firm under supervision of a Colorado lawyer, you would say, "Because apparently I'm the only partner in Colorado and the only lawyer in the group, our collective interest might best be served by Gulf Coast Properties and its members being represented by me and my law firm" and you give the name of the firm here in Denver. That to me

would mean that you're holding yourself out as a Colorado lawyer.

If I knew the background, if you went on to explain that "I'm not a Colorado lawyer. I'm admitted in other states" I would have a different impression, but my offhand impression in reading that without that knowledge would be that this fellow was holding himself out as a lawyer and he has just taken the February Bar exam. I know he's not admitted.

MR. ROSE: Yes sir. I agree with you. The one assumption, what you said, though, one crucial assumption is not accurate and that is, sir, I have in there attached to an affidavit from Peppers, and along with a couple other partners' statements so attesting that my background was known and I knew my background was known to these partners because Peppers in a letter dated either January 4th or January 6, '76 had sent to them a four-page single spaced typed letter outlining all the problems of Gulf Coast Properties Group and saying that I was not -- saying I was just taking the Colorado Bar exam; that I was not yet a member of the Colorado Bar and that I had just become associated with a law firm and there were other -- in other words, I knew that this stuff had been sent out.

Now, what I'm saying is, my opinion is that is the only mistake that I can recall as far as choice of order, and the only mistakes that I know that I just would do differently is that in the Colonel Saber letter, I would not say I'm practicing law in Denver.

Secondly, that letter on the face of it standing alone does have the interpretation that you suggest and when I wrote it, I knew that these letters, I had them in my file, and I received copies of complaints from other people and so on, and that's why I'm saying that these documents in here with the letters from the people who received them saying what they understood put a different context and meaning on that than

what appears from the face of reading tha February 24th letter.

I might add, sir, that I've had Al Sellers, one of the general partners or one of the partners who knows Hargrave well, Mr. Sellers called Mr. Hargrave, and Mr. Hargrave, I'm not sure whether this would be considered relevant or not, but Mr. Hargrave says that he was not complaining of this. What he did, he's a good friend of Gallahan's. Gallahan asked him to forward it to him and he forwarded this stuff to Gallahan not knowing what would be done with it and Gallahan's attorney has forwarded it to this Committee.

CHAIRMAN HOUTCHENS: Are there any other questions?

MR.HILL: I don't feel sufficiently advised as to the complaint here to be sure that I know what is covered. Apparently one is holding himself out as an attorney. Is there other soliciting business? What are they? If you'd tell me just, if you can, briefly the charges here that we're considering.

CHAIRMAN HOUTCHENS: Roger, can you answer?

MR. ROSE: I don't believe, sir, that those letters really indicate what the charges are.

MR. CISNEROS: I think maybe you have a copy of a letter from Justice Groves dated April 22nd, 1976 which is addressed to Mr. Rose and the essential part of it, the reason it says for his requested appearance is that "The Bar Committee is further investigating your ethical and moral qualifications for admission to the Bar in light of your letter to the Bar" which is the letter that we quoted, and of Captain Michael R. Watts' affidavit dated June 6, 1975.

MR. SHERMAN: What is the date of that letter you're talking about?

MR. CISNEROS: This is April 22nd, 1976. That's the only letter you received from Justice Groves?

MR. ROSE: No, sir. I received at least three letters from Mr. Groves.

MR. CISNEROS: Then today we got this letter from, also Justice Groves, regarding the letter from Colonel Roberts, and I think that's in connection with the work that you did for Mr. Peppers.

MR. ROSE: That's right

MR. HILL: Then the charges here (1) relates to holding himself out as a lawyer in this letter, but he admitted he was practicing law in Colorado by that letter and that he apparently acted as counsel in some case for a serviceman?

MR. CISNEROS: I don't think this has anything to do with practicing law because I think you don't have to be a lawyer to --

MR. HILL: I wondered about that.

MR. ROSE: The charges, I believe, sir, that I did have to be a lawyer and I was holding myself out. Now, what I'm saying is that I was not intending to hold myself out to that and I don't believe that I had to be a member of the Colorado Bar in order to deal with the general accounting office or Controller General's Office and so on.

See, it's not even clear where I was. What I'm saying is that it's not like I had been here six months and I had a house and I was really a resident. I was really in a transient status and this file comes here in Colorado and we moved around a great deal within that 12-month period of time and he just asked me to help him on this.

Then I call a Colorado licensed attorney, my friend David Wagner, and I might add, gentlemen, that he's volunteered to come and testify here and Charles Fredrickson about what he advised me and in fact, I have a list of ten people that will just volunteer to come and testify and I've gone through this, throughout my stay here, I can't tell you how many times that I've told people like Jack Olson of the Rocky Mountain News that when he started talking to me, I told him I was not a Colorado licensed attorney, handed him my card and pointed to the part that said admitted only in California and Pennsylvania. I just, as a routine procedure, have a law clerk in the office who's heard me say this over the phone and there must be at least 25 people in there that say they've heard me tell other people I'm not a Colorado licensed attorney and I'm not practicing law or something of that substance.

At any rate, when Peppers came here and he asked me for my advice on this and I consulted Wagner and since Wagner is in Washington, he went to Judge Advocate General's Office, since I was here I made a Colorado phone call. Since I dealt with Federal military law and was under Wagner's supervision, and he so attests and he's a Colorado licensed attorney and really involving multi-state transactions, since Peppers' gone back to Ohio and I'm just flying all over the country, and the only thing I've done, I get free rent when I'm here at Colorado at Gallahan's house at 953 Fillmore Street.

Anyway, I'm just being redundant.

MR. CISNEROS: It is true that Captain Watts is the one who complains about that.

MR. ROSE: That's what I infer from that affidavit, sir. I might add, sir, that the affidavit was written on June 5th. Now, what I'm saying is, I'm told by two different sources, one of which is in a statement here, that those who used to work

Colonel Sabar's office know he was keeping a file of my -- those newspaper records and he's complained about me repeatedly and so on, and that I would think that therefore, I mean, this affidavit was written on June 5th. It's not like Colonel Sabar thought of it later.

Well, let's put it this way: It's one of these attorneys -- as Mr. Moye said, it appears they might have been building a case on me.

MR. CISNEROS: Is this in 1975?

MR. ROSE: Yes, sir. The affidavit was made -- it says six days after the phone call.

CHAIRMAN HOUTCHENS: Would you for the record give us the names of the persons who you said you had a list of who would be willing to come to testify?

MR. ROSE: Yes, sir.

CHAIRMAN HOUTCHENS: And say who they are?

MR. ROSE: Yes. I don't know that anyone would not be willing to testify. I just know the people who volunteered. One is Don Peppers. In fact, Mr. Peppers is waiting in Ohio by his telephone right now at his home for a call from this Committee if they wish to question him. Another is David Wagner. David Wagner is over at the Colorado Supreme Court Library right now. Mr. Peppers is the person I made the phone call in behalf of. David Wagner is the Colorado licensed attorney who I called in Washington and whose affidavit, as his affidavit shows, assumes responsibility for this. Another is Charles Fredrickson. Charles Fredrickson is the former chairman of the Colorado Bar Ethics Committee with whom I have spent a great deal of time discussing the Bar Association ethics rules as

it pertains to my company's Legal Service Plan to obtain some sort of clearance, make sure that we were operating in accordance with the ethical rules and he's a person who has a statement in the record here that shows --verifies last fall I consulted and he advised me what the parameters of an out-of-state attorney not licensed in Colorado could or could not do.

Also is John Amato. John Amato is a CPA-lawyer whose offices are on Washington Street, whose affidavit shows that during the discussions that I had in November, December, 1975, with him and Vince Dominico.

At no time, no one at any time discussed anyone performing any legal services for anyone; rather, to the contrary to what Mr. John Arnison alleges in his complaint to me. That is the guy that was the defendant in my company's lawsuit, rather, the only thing we discussed was whether or not Mr. Dominico and Mr. Amato were interested in investing in my Legal Service Plan Company, hopefully to try to salvage it.

Also Mr. William Secord. Mr. William Secord is a captain in the Naval Reserves who is vice-president of the Talbert Corporation, which I believe is an insurance company here in Denver and he was present at the December 15th, 1975 meeting with also John Arnison and Paul Roach, and Paul Roach, who also says he's happy to testify, and William Secord, will both testify and they both say in their statement that at no time during my meeting with John Arnison did anyone discuss anyone performing legal services for anybody. On the contrary, the sole content of the discussion --

CHAIRMAN HOUTCHENS: You've covered this. Just state briefly who the people are.

MR. ROSE: Also Doug Bragg. Doug Bragg is a Colorado attorney, a partner in Carrigan and Bragg for whom I worked during January of '76.

Also Mr. Dennis Farnsworth. Dennis Farnsworth is probably the person with whom I had the greatest amount of association during the eight months or so life span of Legal Service Plan Company because he was our consultant, and his affidavit shows we were in daily contact, went on business trips together, and in his words, I was meticulous about avoiding any inference that I was a Colorado licensed attorney.

I suppose lastly would be Mr. Andrew Blair here, and Mr. Blair was the attorney for my company and Mr. Farnsworth says in his affidavit that he was even irritated that I would go to Mr. Blair to have him perform legal services for my company at our expense instead of doing what Mr. Farnsworth thought I as an attorney was capable of doing myself. That was a constant matter, ad as Mr. Blair would attest, now we have run up $5,000 worth of legal fees using his law firm to incorporate us into various things that a Colorado licensed attorney must do, to the irritation of Gallahan.

CHAIRMAN HOUTCHENS: You've referred to the record here and I presume that's the stack of papers that are there on the front of the desk.

MR. ROSE: Yes, sir.

CHAIRMAN HOUTCHENS: Are you leaving that for the Committee?

MR. ROSE: I'm leaving that, sir. I have a copy of the statement which I made. I do not have a copy of the rest of it, but it's, you know, what I've been able to amass in this short notice to support what I'm now saying. I'm leaving that.

MR. STUBBS: Possibly you'd like to be selective in what you leave.

MR. ROSE: I know, sir, that it seems with that volume that I'm probably not selective but the fact is, I selected out of a lot of stuff to come to that. All I can say, gentlemen, is that I take this proceeding seriously. In fact, I don't know anything that I've been before that is as serious as this in my memory so basically the charges have come from two basic different sources. There's an aggregate of this, has very serious consequences, of great magnitude for my life, for the rest of my life, so --

MR. STUBBS: Just to get to the point, my thought was maybe you would like to just pick out what you want to leave here with the Committee.

MR. ROSE: The point I'm making, sir, I want to leave all of that. All of that is relevant.

MR. STUBBS: That's fine.

CHAIRMAN HOUTCHENS: All right. Anyone else have a question?

MR. SHERMAN: What is this Gulf Coast Properties? What is it?

MR. ROSE: It is a --

MR. SHERMAN: I've been sitting her wondering what you've been talking about. What does it consist of? Don't go into detail.

MR. ROSE: Okay sir. It's a real estate partnership in which moneys from at least 18 people all over the country were given to Gallahan to buy a ten percent interest in a hotel recreation complex in Mississippi from a gentleman who owned it named Lee Stubblefield.

MR. HILL: Is there some charge here of soliciting business too? Is that one of the inferences?

CHAIRMAN HOUTCHENS: Some of the material --

MR. SHERMAN: Indicates that but --

CHAIRMAN HOUTCHENS: You might have inferred it, but there isn't any charge like that.

MR. HILL: So the real question that we're to decide is do we think that there was a representation that he was a practicing lawyer and was admitted to practice in Colorado?

CHAIRMAN HOUTCHENS: Unauthorized practice of law.

MR. CISNEROS: Right.

MR. HILL: He engaged in unauthorized practice of law in Colorado?

MR. CISNEROS: This is my thought.

MR. HILL: Is that the issue?

CHAIRMAN HOUTCHENS: Of course, the issue is whether or not, if he actually was, then does that result in his being fit to practice law in Colorado morally and qualified to practice law in Colorado and what would we recommend with respect to his admission to the Court.

MR. HILL: All right.

CHAIRMAN HOUTCHENS: Do you have any statement, Andy?

MR. BLAIR: No, Mr. Houtchens, I don't. I thing Mike said it all.

CHAIRMAN HOUTCHENS: Anyone else have anything to say? (No response)

If not, I guess we are adjourned and thank you all for coming.

MR. ROSE: Sir, if you don't mind, I'd like to say one last thing.

CHAIRMAN HOUTCHENS: All right.

MR. ROSE: All right. Well, again gentlemen, I mean, I want to make perfectly clear because it's my future at stake here and I take that very seriously and that's why I have prepared this presentation, these documents, and so on. I guess it's not kosher for or I have never heard of anyone who is being adjudicated try to specify what the issue is, but I'd like to, for your consideration say the following:

Now, I do realize that some of the statements that I made, for example to Colonel Sabar saying I want an interview and now I'm out of the Air Force and I'm practicing law in Denver are susceptible on their face of being interpreted as meaning that I'm a Colorado licensed attorney, but again, I emphasize that in fact I was not practicing law in any capacity other than under the supervision, explicitly taken by the Colorado licensed attorney in accordance with the ethical parameters outlined to me by Mr. Felter and Mr. Fredrickson and later by Mr. Hennesee and regardless of what it appeared, and secondly, even if those few instances, as far as I can see there are two, in which it may have appeared to someone that I was practicing law, it was not intentional and in fact, this record will show and my cards show and all these various statements that I have repeatedly for

months done everything I could at every juncture to inform people that I'm not practicing law, I'm under other people's supervision, and that I'm not a Colorado licensed attorney.

The final thing is, one reason it's been a problem is that people, particularly in other places, I'm somewhat in demand. These people in California send this stuff out to me and then I've got to tell them, and Peppers comes here and seeks me out, and so on. So what I'm saying is that it's not -- I've had the problem and I was aware of the problem. Now, what I'm saying is, gentlemen, even if you should so find that in your opinion someone could have construed that I was practicing law in an unauthorized manner or whatever you do find, it does not necessarily lead to the conclusion that I'm unfit to practice law in Colorado, I'm morally and ethically unqualified. That's the point I'm trying to make here, is that people who are reputable people, a guy who is clerking for Judge Doyle in he Tenth Circuit Court of Appeals, and so forth, who have known me for years and have dealt with me intimately say unanimously and use many statements that it's their opinion my integrity is above reproach and I would not intentionally do anything that was dishonest. That's what I'm asserting to you now.

CHAIRMAN HOUTCHENS: I think we get the picture. What you say in brief language is that you were not in fact holding yourself out as a Colorado lawyer?

MR. ROSE: That's correct.

CHAIRMAN HOUTCHENS: You did not intend to, although you may have by spoken or written word said just that, but you didn't intend to say that and you have not in fact practiced law in Colorado?

MR. ROSE: That's exactly right, sir.

CHAIRMAN HOUTCHENS: Unauthorized. I think we've got the picture. Thank you.

MR. HILL: I also get this impression, though, that even in your statement or testimony here, that you can hardly prevent yourself from saying that you are a member of the firm or you have to stop and catch yourself every time that the matter comes up or you would have led someone to believe that you were a member of the firm on these letterheads you used. I mean, it's not what you said will show that, but your voice will show it. You have to stop and catch yourself every time, even in your testimony, to say you weren't doing it. Do I make myself clear as to what I'm trying to say?

MR. ROSE: Yes, sir. I think I understand what you're saying. All I can say is that I know in my mind what I've tried to do and intend to do and I know what all these people who have dealt with me say they recall me having said and done.

Now, the only point is, I have a problem in that -- it's only a problem in that I come in contact, interface with people in which the issue comes up that I have to take the initiative to make sure that there is no misunderstanding so if somebody calls me from California or sends me stuff from California as has happened, or I meet this guy Joe and I'm talking with him, I have to take the initiative to give him my card and point out as I did with Jack Olson, and so on.

MR. HILL: All right, but somebody asked you what they do in respect to a legal problem when you're here in Colorado. Do you ever give them an answer?

MR. ROSE: My only hesitancy, sir, is, I'm trying to think of any instance I did and I don't know of any. When I was president of the company, as Mr. Blair's statement attests, then I was in a lot of contacts where my legal knowledge was useful and I was sort of in dual roles. I mean, I wasn't representing

the company as a lawyer, but I was discussing Bar Association ethical rules and obviously my knowledge came into play, but I can't think of any single example in which I have given anybody legal advice about anything other than Peppers calling me or Peppers here in this case, but I can't really say. I can't be positive that I did not.

What I can be positive of, sir, is this: Excuse me for rambling. I can be positive that I never identified myself as being an attorney for somebody and giving them legal advice. Now, whether my girl friend asked me about something that was a legal matter or had some overlap or whether some nextdoor neighbor, some guy I met at a party or something like that, I don't ever recall doing it, but I can't honestly say I didn't do it. I don't know.

MR. CISNEROS: Did you ever get paid for anything?

MR. ROSE: No. I've never been paid for anything. I don't give any more legal advice than any layman and I never knowingly or intentionally, I can't think of any example I've given advice to.

I'll tell you one reason I didn't do that. One reason I sent people to Michael Buttes, people who come to me and I'd send them to Michael Buttes, an attorney. Mike Buttes will tell you that I have sent a lot of people to him. In fact, it just occurred to me, this, gentlemen: Unbeknownst to me, my Legal Service Plan Company was put in the yellow pages of the phone book in November of '75 and in January of '76, our company was supposed to go in operation, so I had a problem now of people calling our number up, just taking out of the phone book Group Legal Service of Colorado, Inc., and didn't advertise for them or anything like that, but they called up and wanted legal advice, so I said -- now, I never gave them any advice. What I did is, I called up two or three attorneys I knew, one of which is Michael Buttes, and said, "Look, I've got a problem

now, people are calling because they see Group Legal Services of Colorado in the phone book. I feel obligated to do something with them because they have called, so I'm going to send them to you" and I took the initiative, I sent them, and I was in a position repeatedly until I could have just taken the work myself or received some kind of pay of given the advice and I never did it.

I'm just saying, gentlemen, I've had constant temptation and I've had constantly the opportunity and I've avoided it because I didn't want any kind of problem whatsoever and furthermore, I didn't need to do it. It's not worth jeopardizing my future or my reputation to do something this petty.

CHAIRMAN HOUTCHENS: Anyone have anything else?

MR. SHERMAN: No.

CHAIRMAN HOUTCHENS: All right. Thank you very much for coming in, gentlemen, and with this we will terminate the interview.

(Proceedings terminated)

CERTIFICATE

STATE OF COLORADO
VS
CITY & COUNTY OF DENVER

I, Darlene Armbeck, Certified Shorthand Reporter in and for the State of Colorado, do hereby certify that the foregoing proceedings were reported by me, transcribed under my supervision, and are true and correct to the best of my knowledge and belief.

Darlene Armbeck

APPENDIX I

COLORADO STATE BOARD OF LAW EXAMINERS
220 State Capitol Building
Denver, Colorado

In the Matter of the Admission
to the Colorado Bar of
MICHAEL THOMAS ROSE. **REPORTER'S TRANSCRIPT**
Successful on February 1976
Bar Examination.

The above matter came on for hearing beginning at 3:30 p.m., June 4, 1976, State Capitol Building, hearing room, City and County of Denver, Colorado.

Bar Committee Members Present:

ROGER CISNEROS - Discussion Leader
RUSSELL P. KRAMER
JACOB L. SHERMAN
WARREN L. TURNER

Bar Committee Members Not Present:

BARNARD HOUTCHENS
DONALD S. STUBBS
COVER MENDENHALL

Others Present:

MICHAEL T. ROSE, Applicant

GLENN SAUNDERS
MRS. LORRAINE HANDROW

MRS. CATHARYN ABLES, Secretary to the Board

Prepared by Daily Copy Specialists, Denver, Colorado

ROGER CISNEROS: I think those that are going to testify should be sworn in. Mr. Saunders, I think you indicated you want to say a few words?

MR. SAUNDERS: I am perfectly willing to assist Mrs. Handrow.

ROGER CISNEROS: Mr. Rose, I think that you've received papers from Mrs. Ables, with the exception of these two. There's a letter here from Dick Hennessey and a supplemental affidavit from Helen Towers, which you probably have not received.

(Documents were passed to Mr. Rose.)

I think the way that we would like to conduct the meeting is, as most of you know, we had a lengthy hearing sometime back. As I understood the charges, Mr. Rose had been accused of maybe engaging in the practice of law without being admitted. And he did furnish some testimony and he did furnish quite a bit of paperwork, affidavits, letters. I've gone over those letters.

I think at this time what I would like to do is just go into any new things that have not been heard before and not go into too much as to what we've already heard.

Mr. Saunders, you've indicated you wanted to be present. And I don't know exactly what --

MR. SAUNDERS: No, I have no desire. I simply said we would make ourselves available. We received a letter from Mr. Rose and because I had heard of the hearing being conducted, I

thought it proper for me to forward the letter to the Committee. The letter related to a statement by Mr. Rose that he had been authorized to employ an attorney and that Mrs. Handrow, who is the office manager, not a lawyer, apparently had authorized him to employ and outside attorney. And those statements were simply not true and I think the Committee should know that such statements were not true and it should be on the record.

ROGER CISNEROS: Then I imagine that Mrs. Handrow would just verify the --

MR. SAUNDERS: I don't know what she'll say.

MR. KRAMER: Excuse me. May I ask a question?

ROGER CISNEROS: Go ahead, Mr. Kramer. And if members of the Committee have any questions, well, just go ahead and ask them.

MR. KRAMER: Yes. Mr. Saunders, when you say that the statements Mr. Rose had made with regard to the hiring of an attorney were not true, you are not speaking from direct knowledge; you weren't present when he had any conversation with the lady, or if he had one?

MR. SAUNDERS: I know nothing about conversations with Mrs. Handrow. I know I never authorized any outside counsel, and I know that Mrs. Handrow has not been authorized to employ outside counsel and outside counsel, when they are employed, are always employed by one of the attorneys.

Mrs. Handrow is authorized to operate the office. I've known Mrs. Handrow for 25 or 30 years. I knew her in business so well that when we moved out of the Water Department ten years ago I was able to secure her services, and she has been our office manager since we moved to our present loca-

tion ten years ago. And she runs the office, but she doesn't do any legal work. But as far as the office is concerned, she runs that.

This letter said she had authorized something and she said -- I asked her about that and she said, "I never did any such a thing at all." I just wondered if she had actually exceeded her authority. I've never known her to do that before.

MR. KRAMER: But you're saying, if I understand you correctly, that it is the policy of your office that the employment of outside attorneys must be approved by an attorney in the firm?

MR. SAUNDERS: It's always done by an attorney in the firm, and usually by concurrence of at least two attorneys.

ROGER CISNEROS: Then, is that a policy communicated to everybody in the firm?

MR. SAUNDERS: Everyone knows it's policy, yes.

ROGER CISNEROS: Mr. Bragg, you've mentioned you might want to say something?

MR. BRAGG: Yes, if I may. And I'm afraid I'm running against the clock, too, so if I could briefly speak and then answer any questions the Committee might have and then leave, if that's all right.

I didn't know about this hearing until about 20 minutes ago. Mike Rose is working for our office and he mentioned that it was coming up and I simply offered, if it would be of any assistance, to come over.

I really have no knowledge of who said what to whom, when, or any of these things that are apparently before the Committee. The only thing I know about this, really, I was present at one meeting. My affidavit is in the file and I won't repeat what is in there. But I did want to come over and tell the Committee about our firm's experience with Mr. Rose.

I guess Jim Carrigan and I both met Mike about the end of last year when he was beginning to look for a law clerking job in Denver while he was taking the bar and both Jim and I independently talked to him, literally without each of us knowing the other was going to do it until we met one day and discovered we had both talked to him and been impressed by him

We gave Mike a job as a law clerk at that time back about the end of last year, and he was working with Jim Carrigan. Jim was totally satisfied with him. We had no problem whatsoever with Mike, nor -- and were quite impressed with his ability.

The deal we had with Mike is that we really didn't have a job for a fulltime permanent lawyer at that time and had extended an offer to a law clerk of ours to start in August. It's hard for a firms of our size to take in two people. We only have four lawyers in the firm right at the present time. It's very hard to do this.

We basically told Mike he could work his way in the job and then maybe it could work into something later. Well, about that time he received the offer from the Saunders firm and went to work for them.

And I don't recall for what length of time he worked for the Saunders firm, but when he was fired by the Saunders firm he came back and told me about it. And I must say he was extremely candid in telling me all of the circumstances that went into it and why he was fired by the firm, the problems he had

had, and he was candid about the problems he was having with this Committee.

And in spite of all that, we really had no reluctance whatsoever in putting Mike back on the payroll. And at this time since then -- and I don't recall how long it has been, a month or six weeks, or whatever it has been, since he was fired by the Saunders firm -- he has worked directly with me on a day-to-day basis doing research and in trial preparation.

And when I described him as a law clerk, that's really not a broad enough definition, because under my direct, continuing supervision, with multiple meetings every day, he is doing things like interviewing witnesses for me and assisting me in preparing litigation. So that I think I've had a pretty broad look at his abilities.

Because of the problems he has had with this Committee, and which I'm aware, I've been very careful to watch him and to particularly make sure there was no overstepping of any kind. And there has been absolutely none. His conduct throughout the time he has been with our firm has been exemplary. Jim Carrigan is impressed with Mike and I'm impressed with Mike. And we are still to this day, if he ever gets admitted to the Bar, seriously considering offering him a job in our firm.

My total impression of Mike is that he probably, once he learns the practical side of the law, you know, what you can do here and what you can do there and how you should conduct yourself in your interpersonal relationships with clients and so on -- which he does pretty well already, but he still comes to me and says, "How should I approach so and so? What is the best approach for this kind of witness?" -- once he learns all of that, he has the potential to be an absolutely brilliant lawyer. He has a brilliant mind and he is an extremely hard worker,

and one of the most hard working people I've ever met. When you're around Jim Carrigan, that's saying something.

That really is nothing, I guess, more than my opinion that he is a good lawyer and I think he is a pretty good person and I hope that some day he will be admitted to the Bar.

ROGER CISNEROS: Did you ever -- well, did he ever give you the impression that he was passing himself out as a lawyer or anything like that?

MR. BRAGG: No. No, to me he was always completely candid and said, "I'm taking the Bar, and I will be taking the Bar in February," or whatever it was, "and if I pass, it will be in April, and I need a job as a law clerk." That is the way he posed it to us. "But I'm not a Colorado licensed lawyer." I think he is licensed in some other state. But to my knowedge, he has never passed himself off as a Colorado licensed lawyer to anyone else that I know of.

ROGER CISNEROS: Any questions?

MR. KRAMER: I have none.

ROGER CISNEROS: Thank you.

MR. BRAGG: Thank you for letting me speak.

ROGER CISNEROS: Mr. Rose, without going over what we've gone over before, is there anything you want to say?

MR. ROSE: Yes, sir, there is. The reason I requested an opportunity to come here is to respond to this letter which Justice Groves forwarded to me that Willard Snyder had sent to the Committee.

Basically there are three points in the letter that I felt it was really absolutely essential that I respond to, one of which is what Mr. Saunders has already spoken about.

MR. SAUNDERS: Which letter is this you're referring to?

MR. ROSE: This is the May 13, 1976, letter from Willard Snyder to the State Board of Bar Examiners.

Now, the first thing -- I'll just take it in the order in which it's stated in the letter. The first thing that I want to comment on is that Mr. Snyder says in the letter that I was given a warning in March by members of the firm that because I was engrossed in certain personal items which was interferring with my work with the firm, that if I did not cease doing that, that I would be terminated from the firm.

In fact, I was told that I was terminated by Mr. Saunders and then the decision was reversed and I promised to get my personal items out of the firm and no longer spoke to anyone about them.

Mr. Snyder says in this letter, and I quote, "It turned out that Mr. Rose did not mend his ways. For example, on our stationery, without our knowledge, he wrote Colonel Sebara, Lowery Air Force Base, dated April 19, 1970, as follows: 'I am now an attorney practicing law in Denver.' This appeared to us to be a misrepresentation of his status as a lawyer. Consequently, on the morning of April 30, 1976, Mr. Rose was fired."

Now, gentlemen, I am concerned about that statement and that's why I'm here to respond to it.

As I explained to this Committee before, of course, I did write the letter to Colonel Sebara. It was not at all, as I've explained, an attorney-client relationship. I was asking him for

an interview. I had been friends with him because he was my former instructor at the Air Force Academy and I was just giving him a generalized description of what I'm doing these days, as I would to any other friend who is still in the military, or to my brother if he calls from Boston say, "What are you doing?" I just tell him, "I'm practicing law." And I don't in that context specify that I'm not licensed in Colorado and I am a law clerk.

But as all of those affidavits and my business cards show, I've tried to ensure that people, when I was in an attorney-client relationship in any possible context, understood that.

At any rate, what concerns me about this is that this is either a statement or can be implied that the people in Saunder's firm themselves believed that I was making a misrepresentation and that, consequently, as this says, I was fired.

Now, I was fired on Friday morning, April 30. That afternoon I met before this Committee. The afternoon before, on Thursday, an attorney in the firm, Wayne Fowler, came in my office and said, "Mike, Mr. Saunders has just been informed by Colonel Sebara by telephone that you wrote this letter, but don't worry about the misrepresentation part of it, Mike, because Mr. Saunders," as he put it, "has gone off on a tangent. Mr. Saunders wants to see you in his office, because he is perturbed because you applied to be in the Judge Advocate General Reserves, which would take two weeks of your active duty without prior permission of the firm and that two weeks would -- might impinge on your duties. You should have consulted somebody in the firm."

I did go to Mr. Saunders' office. Mr. Saunders told me that -- asked me why I had applied and expressed to me the opinion that I shouldn't have applied without their prior consent. I apologized to him. I explained the context I meant this.

Mr. Saunders said that he understood that; that he didn't see any problem with thinking that I had made a misrepresentation here and then told me I was foolish to have applied to them. And I said that anybody can complain. He said, "No, Mike, we are concerned because Colonel Sebara called up just to pass on the information," and then expressed the opinion, "Mike it's stupid to apply to them because they are in so many" -- I can't remember the exact words, but "they are out to get you because of your prior interactions with them."

Now, the only relevance of this is, gentlemen, I don't understand how Mr. Snyder can now say in here that the firm fired me consequently because this statement I made actually appeared to them that I was actually appeared to them that I was actually making a misrepresentation. And I just want to make it clear that, you know, I acknowledge that I made a mistake in judgment by writing that statement. I never dreamed when I wrote it that this would be inferred that way and that it would cause the kind of trouble that it has since then.

But I was not representing intentionally to anyone that I was licensed in Colorado. And I don't believe that at the time I was fired the people in the Saunders firm believed that either, as judged by Mr. Fowler and Mr. Saunders' comments the afternoon before. It was only the next morning when the Golf Course Properties Group stuff was given to Mr. Saunders for the first time by Mr. Fowler that Mr. Saunders decided to fire me. And I left his office Thursday afternoon thinking everything was okay about this meeting.

Now, the second matter that concerns me is on page 2, where Mr. Snyder says, quote, "Certain of our files upon which he was working are missing without explanation," unquote.

Now, this concerns me also, because this implies that I might

have absconded with some files of the firm and had some ulterior motive in doing so.

Well, this is what happened. I mean, I've taken three of the files, but I did only because I thought, and I still think, that I was authorized to do so. And in -- well, here are the circumstances. These three people I had brought to the firm and they became firm clients because these people wanted me to work on their case.

ROGER CISNEROS: Mike, just a comment. All the members of the Committee, I think, have --

MR KRAMER: I was just going to suggest if Mr. Rose has something he wishes to add to what he has already submitted in writing, there is very little purpose in taking up time because that's part of the record.

ROGER CISNEROS: Right. We've read it. All right. It's part of the record, Mike, and I think we are all familiar with what the three files are you are talking about.

MR. ROSE: One reason first. I understand. The one reason I came is that I felt I could not take the risk of knowing just whether the stuff in fact would be read or how well it would be read, or so on, so I need for my own protection to make a presentation.

So just to summarize in about one sentence, of these files, one of them really wasn't even the firm's, because nobody has authorized the firm -- nobody had sent any authorizations in for the firm to represent anybody. It was in a preliminary stage of discussion.

And in two of the three cases Mr. Saunders told me he didn't want to represent them and for me to get their stuff out of the

firm. And Mr. Snyder outside of the hearing in Mr. Baylor's presence also said they weren't going to represent one of these three. And in the third, all three of these, the final thing, I called them up that weekend, the clients, because I felt I owed them a duty, and said, "Listen, you came to the firm because you want me to work on your case, and I'm not a member of the firm, I'm not employed any more, so I can't. What do you want to do?" All three told me, "Give it to another attorney," and told me who it was. And I've given the files to them, with one exception, and that's I've offered the Golf Course Properties to Richard Daley and now there's a controversy; he wants one certain authorization for him to proceed.

MR. SAUNDERS: All right. Now, there was one sentence -- and I cannot remember all of this. I could handle this one at a time, but Mr. Rose can talk longer than I can remember. And if you are going to ask me to comment on these, you're going to have to cut him off a piece at a time.

I could comment on the first paragraph, I can comment on his second, but if he is going on indefinitely, I'm going to forget what has been said.

ROGER CISNEROS; Well, the one thing is I think, unless other members of the Committee think differently, the things that have occurred since the hearing last time, to me, are relevant to the issue at hand. You know, there appears to be some controversy, but I think it should be handled some other way by some other committee, other than this one.

MR. ROSE: Gentlemen, I'm perfectly happy for the Committee to take that position. The only concern I had is that the inference here that I've been dishonest, I've been misrepresented to be an attorney, that the firm gave me authorization to do something, that I've stolen files, that the members of the firm actually believed that I was intentionally misrepresenting that I was a lawyer to Colonel Sebara, and to

me, these things had a bearing on my integrity and had a bearing on my character and fitness to practice law.

Now, if you consider it irrelevant, then, that is just fine with me, but I was afraid that you might not consider it irrelevant, because I saw a possibility of that kind of inference from these statements.

Now, this -- yes?

ROGER CISNEROS: Do members of the Committee want to go any further into that? Russ?

MR KRAMER: Well, I think, from my point, so much of this as is a dispute between lawyers, or would-be lawyers and lawyers, is not significant to our responsibility, unless it does involve some actual indication of a lack of integrity or dishonesty.

You've made your explanation, Mr. Rose, and it is perfectly obvious there is a difference of opinion between you and Mr. Saunders. But what I would want to know as a member of this Committee is whether Mr. Saunders has anything that he would wish to say that -- not necessarily to prolong the argument between you and Mr. Rose.

MR. SAUNDERS: I have no argument. I won't argue anything with him. You can't argue with him, but I would like to straighten out these facts.

I had a call from Colonel Sebara, whatever his name is, stating that he had a communication from Mr. Rose in which he had asked for a position in the Judge Advocate's office, I think it was, and that he had a copy of that letter and would be glad to send it to me. That was one day, and I don't remember the dates.

And I suggested to Mr. Rose that in view of the fact he was fighting the Army, the Air Force Academy in particular, and the Army, it seemed to me there would be a conflict of interest for him to represent the United States in one case and be suing the United States in another.

Now, that was what I said to him. I don't know what he said I said, but that's what I said to him.

The next day I got a copy of the letter. And when I saw this statement, "Now I'm a civilian attorney practicing law in Denver," this added to other matters that I had heard and didn't know in detail. You have more correspondence than I. This correspondence was not left in our office. All that was on our letterheads. But I've been hearing things were going out on our letterhead that shouldn't have ever gone out because it is contrary to the character of our law firm. People being called liars and such things, we don't do that.

And we had had this out about two weeks before and it was going to be straightened out. When I saw this statement, there wasn't any question in my mind the implications of this. I don't know anything about his mother or his friends. When I read that, that says the man is practicing law in Denver and I want no such person in my office. Out he went.

I didn't do this ex parte or entirely alone. I took this up with Mrs. Handrow, our office manager, who has had a great deal of practical experience, and Mr. Snyder.

Now, as to files, he was never authorized to remove a file from our office at all. And what has been said about this client that he was generating was that people who had sent money in would have to give authority to our office to either send the money back to them or transmit files to Mr. Rose. We want the people who had sent money in to give the authority; we didn't

want the files to walk out of the office. And nobody ever authorized them to walk out of the office.

Now, that is just a little difference, but that is the problem that we had.

MR. KRAMER: May I interrupt you. What is the status of the money that was sent to your firm by these other people? Where is it now?

MR. SAUNDERS: We've been receiving letters or notes back from them directing the disposal of it. And as to what those provide, I don't know. That's a detail I know nothing about. Lorraine?

LORRAINE HANDROW: Mr. Snyder has it all in a file.

MR. SAUNDERS: And he has it all in a file. Mr. Snyder told me he would dispose of these matters according to the signed notes he receives from the people.

MR. ROSE: I can answer your question.

MR. SAUNDERS: Mr. Rose sent a letter to these people, but we also sent a letter, because our past experience indicates we would like to have it in our frame of verbage.

MR. KRAMER: Well, my question is, at the present time your firm still retains these funds?

MR SAUNDERS: That's right. And we'll dispose of them.

MR. KRAMER: And you are waiting for the necessary authorizations to disburse them?

MR. SAUNDERS: That's right. Actually the monies have all probably been returned by the firm. We are not going to keep

any of it. We don't want anything to do with it. We are going to send the money back and get rid of it.

MR. KRAMER: Okay.

ROGER CISNEROS: Mr. Saunders, is there anything in your knowledge of Mr. Rose that you would think is -- he should not be allowed to practice law in Colorado?

MR. SAUNDERS: Oh, yes. I don't think he can tell a straight story and I don't think -- I think he is his own worst enemy. He is a brilliant man. He is absolutely brilliant. Some work he did was fine. But you can't turn him loose; you have to supervise him every minute, because, if you don't, he goes off on a tangent.

He seems to have a chip on his shoulder. He is going to reform the world. And the result is he twists everything to the viewpoint he already has instead of learning the facts and adjusting to the facts. Now, I think this is being ridiculous. And the correspondence I've seen is replete with misstatements.

ROGER CISNEROS: But you had him on your staff for how long?

MR. SAUNDERS: Oh, I don't know, but a lot of that time he was studying for the bar and came in half time. He did some briefing, and the briefing was excellent. He did good work.

But, as a matter of fact, this is the first time we've ever had anybody, and we've had a lot of them in the course of 45 years, that we had to doublecheck. We've had people who were direct, honest, and we didn't have to check. We've never thought we had to re-read the correspondence of someone. If we had to do it, we might as well not have them around. We don't have that kind of time.

MR. ROSE. Could I please respond? I'm losing track now. I mean, really, I can't just leave this lie, as much as I would like to not get into it, but I absolutely have to because of what he is accusing me of.

Now first, with regard to Golf Course Properties Group. I've obtained out of, I think the number is, 12 authorizations for the money to be transferred from the firm to Richard Daley, and also, in addition, from each of these persons authorization from Richard -- for Richard Daley to represent Golf Course Properties Group. Five of them are in the Saunders firm possession, because I hand delivered it to them -- we are talking about getting the facts straight -- to Willard Snyder and two of them I just received in the mail yesterday and they are in this briefcase. So, in other words, the majority of the people have already sent authorizations, which I've delivered to them.

So, now, the firm is representing half technically and Richard Daley the other half.

Secondly, as far getting these facts straight, there truly is confusion, miscomunication, and lack of communication about facts. As an example, I went to Richard Daley Tuesday and he told me -- he's told me twice now, and he said if you ask him he'll affirm it -- that Snyder told him on the phone that I'm not admitted to practice law in California and he doubts seriously that I'm admitted to practice law in Pennsylvania. And that incenses me that an attorney would say that without checking out the facts.

Here is my Supreme Court Certificate from California. I have here the card saying I'm admitted in Pennsylvania.

What this comes down to is that the one attorney Snyder doesn't know what Saunders has said about certain conversa-

tions and the facts are all mixed up, and so on and so on. But what is really relevant here, gentlemen, is they told me to get this out of the office.

We agreed that -- the reason I took this Golf Course Properties file is I didn't want to go back and face these people. I mean, I knew they weren't going to handle it. He said they would like to get it out of the office; Snyder. And Blair Prince told me, "We are not going to do this. We are going to send all the people's money back." And I said, "All right. Richard Daley has already got something in progress, a writ of replevin," and I knew that was going to be accomplished.

Furthermore, Mr. Saunders says I wrote letters to these people. He doesn't know what he's talking about. I've not written a letter to Golf Course Properties Group. Don Peppers, who is another partner like me in Golf Course Properties Group, wrote the letter.

And my facts, and what he thinks is my confusion of the facts, I'm trying to say is no more confusion than what he and Mr. Snyder say are the confusion of the facts.

MR. SAUNDERS: I would like to interrupt at this point to get back on the track. First, something was said about Mr. Snyder having said that this man was not admitted to practice law. Mr. Rose wrote a letter to this effect to Mr. Snyder and Mr.Snyder called this Mr. Daley and asked him if that were true; if he though Mr. Snyder had said that. And he said, "Why, no," he said, "I would never testify to a thing like that at all." Mr. Snyder says he never said any such thing.

MR. KRAMER: Let's knock that off, because, Glenn, we are talking about hearsay, for one thing, and any recriminations between Mr. Rose and Mr. Snyder are no business of ours. We don't care about it.

MR. ROSE: That's why we asked Mr. Snyder to come, for one thing.

MR. SAUNDERS: Mr. Snyder is busy, as we all are.

ROGER CISNEROS: Well, the argument that you two have, does that go into whether Mr. Rose is a fit and proper person to practice law in Colorado?

MR. SAUNDERS: From a character standpoint I wouldn't have him near me.

ROGER CISNEROS: Well, you fired him, yes.

MR. SAUNDERS: I wouldn't want him practicing law in Colorado, very frankly, or anywhere.

ROGER CISNEROS: But we have Mr. Bragg's --

MR. SAUNDERS: He is incapable of analyzing facts accurately.

ROGER CISNEROS: But Mr. Bragg's testimony is he gets along very well with him, so apparently there is a question --

MR. SAUNDERS: He talked there about Mr. Carrigan, who on the telephone told me a little differently. That's hearsay again.

ROGER CISNEROS: Well, does the Committee want any other information?

MR. SHERMAN: Well, as near as I can tell, everything we've heard today is pretty well documented in the written material we've had.

MR. TURNER: It doesn't seem to me there's a whole lot to be gained by having a repetition of the same testimony.

ROGER CISNEROS: Well, this is the way I feel.

MR. SHERMAN: It's all in the record there. We can read the record. That's all it is.

ROGER CISNEROS: Because I feel we've got enough information on it, Mr. Rose.

MR. ROSE: That's fine with me, gentlemen. Like I say --

MR. SAUNDERS: May we be excused?

MR. ROSE: -- it was a serious matter to me to worry about this letter being buried and everything else, so I felt a need to make an oral presentation.

MR. KRAMER: I wanted to ask one question of Mr. Rose. I noticed in the file this business card that you had that you used and apparently gave various people. Was the preparation of that card cleared with the firm that you worked for?

MR. ROSE: Not only cleared, sir, but it wasn't even my idea. Mrs.-- I'm not sure exactly, but I'm pretty sure that it was definitely approved by Mrs. Handrow and it wasn't my idea. I'm not even sure who, but please ask them.

LORRAINE HANDROW: I did approve that business card. He needed something to give to people.

ROGER CISNEROS: Okay. Anything else?

MR. KRAMER: No.

ROGER CISNEROS: Well, thank you, gentlemen.

MR. SAUNDERS: Thank you.

(The hearing was concluded at 3:55 p.m.)

CERTIFICATE OF REPORTER

THIS IS TO CERTIFY that I, JOHN D. BOVERIE, a Certified Shorthand Reporter within and for the State of Colorado, official reporting for this Board, was present at the time and place of the hearing set forth in the caption hereto; that I took down in shorthand all proceedings; that my notes were reduced to typewriting by me; and that the above and foregoing is a full, true, and accurate transcript.

DATED this 13th day of February, 1981.

John D. Boverie, CSR

APPENDIX J

GRIEVANCE COMMITTEE
SUPREME COURT
STATE OF COLORADO

September 24, 1976

PERSONAL AND CONFIDENTIAL

The Colorado State Board of Law Examiners
220 State Capitol Building
Denver, Colorado 80203

Subject: Michael Thomas Rose

Dear Members of the Board:

On July 29, 1976 I referred to you a complaint against Michael T. Rose made by Wilson Miguez, C.P.A. Essentially this complaint alleged that Mr. Rose had failed to pay for professional services rendered in providing an accounting of Gulf Coast Properties Group which is some sort of real estate partnership. Miguez's complaint alleged that he provided the accounting based upon Rose's representation of himself as attorney for a majority group of partners and that the partners would pay for the accounting. Mr. Miguez further stated that Mr. Rose subsequently denied being or representing that he was the attorney for the partners or that he ever requested such an accounting. Subsequently Justice Groves, on behalf of the Board, requested that I assist the Board by making inquiry concerning two points made by Mr. Miguez in his complaint, namely:

1. Obtaining statements from one or more corroborating parties alluded to in his statement: . . ."obviously forgetting that he had acknowledged his request for

work from me in the presence of other parties."

2. The facts in the matter of the lawsuit which Mr. Rose allegedly filed on behalf of one Klaus Schafer of Arizona against a client of Miguez.

I was not able to achieve contact with Mr. Miguez until September 13, 1976. When I did it became apparent that the matter of his complaint was interrelated with other "complaints" which the Board is considering in assessing Mr. Rose's fitness to be admitted to the Colorado Bar. After obtaining and reviewing your extensive file in this matter and discussing it with Mrs. Ables, it seemed that consideration was being hampered due to the complexity and sheer volume of the information which has been presented to it in connection with Mr. Rose's application. Rather than perform the limited inquiry requested, I have taken the liberty, with some encouragement from Mrs. Ables, of directing my efforts to giving some organization and focus of the entire matter.

THE COLORADO STATE BOARD
OF LAW EXAMINERS
September 24, 1976

There are two separate streams of events with which most of the events presented can be associated. Broadly categorized these are: (1) Mr. Rose's dealings with the United States Air Force; and (2) Mr. Roses's associations and dealings with a Ronald D. Gollehon in various business and investment endeavors which resulted in a variety of controversies. The circumstances of the first set of events are relatively simple; the second set of events become quite complicated.

In preparing this summary I have reviewed and organized the entire file given to me, and I have met once personally and conferred twice by telephone with Wilson Miguez. I have also conferred by telephone with Mr. Al Zinn who is attorney for Ronald Gollehon. I also talked by telephone with Henry Roath

who is attorney for Lee. E. Stubblefield, President of Colorado Western Development Company, with whom Gollehon had substantial business dealings. Finally I had a long distance telephone conference with Captain Eric L. Winborn, U.S.A.F. who is an Air Force JAG attorney who also represents four partners of Gulf Coast Properties Group, one of the joint business endeavors mentioned above, in litigation against Gollehon in the U.S. District Court for the District of Colorado. Mr. Winborn is stationed in Tucson, Arizona.

DEALINGS WITH THE UNITED STATES AIR FORCE

Mr. Rose graduated from the United States Air Force Academy in the late 60's and thereafter was sent to law school through a special Air Force program. Apparently during this period Mr. Rose authored a controversial law school article criticizing the honor and disciplinary systems of the nation's service academies. Apparently his relationship with Air Force officials was antagonistic. In any event, Captain Winborn informs me, Mr. Rose was the first person in this special Air Force Law School Program no to be "designated" for the Judge Advocate General Department upon completion of law school. Subsequently Mr. Rose terminated his Air Force service, but his dealings in military matters continued.

The first event in this connection which is relevant to the question of fitness is Mr. Rose's April 9, 1976 letter to Colonel Allan L. Zbar in inquiring as to membership in the Judge Advocate General's Department Reserve. Rose's letter was on office stationery of the law firm of Saunders, Snyder, Ross & Dickson, P.C. and stated: "now I am a civilian attorney practicing law in Denver,. . . ." (See Correspondence and Transmittal packet in file.) Apparently Colonel Zbar recognized Mr. Rose's name immediately due to his unique notoriety in military circles.

When Colonel Zbar sent a copy of Mr. Rose's letter to the Board, an affidavit of a Captain Michael R. Watts, U.S.A.F. was also enclosed relating the circumstance of a May 31, 1975 telephone call from Mr. Rose to him. That affidavit states that Mr. Rose stated that he was an attorney in Denver representing a client who was a member of the United States Air Force and was requesting an opinion or information with regard to a military justice matter pertaining to his client. The affiant further stated: "I was given the impression by Mr. Rose from the tone of the conversation that he is an attorney practicing law in Denver, Colorado.

Another Air Force matter is the April 26, 1976 letter of Lieutenant Colonel Wayne E. Robinson, U.S.A.F., Staff Judge Advocate, regarding a decision of the Comptroller General of the United States in case number B-173763 which was the matter of active duty pay and allowances -- First Lieutenant Donald A. Peppers, U.S.A.F. The case digest of the matter reads as follows:

> Air Force officer stationed in Ohio accepted Ohio notary public appointment apparently in an attempt to accept a "civil office" for purpose of terminating his military commission under 10 U.S.C. 973 (B). Although Ohio notary public position is a civil office, in view of the Ohio court decision casting doubt on military officers' eligibility for such office and Federal court decisions in a similar case the Comptroller General finds the matter too doubtful to hold that the officer has forfeited his commission and therefore will not object to continuing the officer's military pay and allowance.

Mr. Rose represented Lieutenant Peppers. The written-opinion indicated that the action was taken in response to matters submitted by "Michael T. Rose, Esq., Denver, Colorado, an attorney representing (Lieutenant Peppers) . . ." Colonel Robinson states: "I understand that Mr. Rose is not a member

of the Colorado Bar and from this reference to him, it appears that he is holding himself out to be a Colorado attorney. You might wish to check into this further." (Lieutenant Peppers is one of the partners involved in the controversies described below.)

The facts in question with regard to these Air Force matters speak for themselves. The instances have been summarized here merely for convenient reference.

BUSINESS AND INVESTMENT DEALINGS
RONALD D. GOLLEHON

Ronald Gollehon was a member of an Air Force Academy class which graduated a couple of years behind Mr. Rose's class. He was administratively discharged from the Air Force, according to Captain Winborn, for failure to conform his ways to the ways of the Air Force. Subsequently he somehow became associated, supposedly as some sort of sales agent, with Colorado Western Development Corporation (CWDC). Lee Stubblefield is the President of CWDC. During this time and subsequently Gollehon apparently began making real estate investments on his own. In the course of these activities he solicited the involvement of a number of his former classmates in joint real estate investments. There were several different groups but the number of individual participants ranged between 18 and 24 persons. I have been able to identify at least four entities: Gulf Coast Properties Group; Echo Hills Associates; R and R Associates; and R and N Associates. It is not clear what business entity form these associations assumed, primarily due to the informal, undocumented and unbusinesslike manner in which Gollehon operated.

Due to this apparent failure to conform to certain legal requirements in business standards and because of the security aspects to these activities, the SEC is now involved. Mr. Rose was one of the "partners" in Gulf Coast Properties Group

which was formed some time in 1974. When certain appearances of irregularity surfaced in late 1975, a bitter and extended controversy ensued. Most of the matters which have been brought to the Board's attention relate to Mr. Rose's conduct in the course of this controversy with Gollehon over Gulf Coast Properties Group.

(All of the documents pertaining to the Gulf Coast Properties Group have been segregated and arranged in chronological order in the attached file, regardless of whether they were obtained prior to or during this inquiry. References which follow will be by date to documents in this special Gulf Coast section of the file.)

I have gathered the following impression of the history of the Gulf Coast Properties Group. Captain Winborn claims that Stubblefield owed Gollehon about $50,000 in past due salary and commissions by some time in early 1974. As payment Stubblefield conveyed a condominium in Mexico to Gollehon. Subsequently Gollehon either traded the condominium back to Stubblefield or gave it as security for a downpayment, in exchange for a 10% interest in a development called Longfellow House and Gardens on the Gulf Coast in Mississippi. At about this time, Donald Peppers indicated to Gollehon an interest in this kind of investment and eventually, considering the sums of money needed, agreed to help put together an investment group of their former classmates. I don't know to what extent either Gollehon or Peppers did the actual soliciting; I suspect it was a combination of both. It appears to have been accomplished in quite informal manner, with limited disclosures.

Some sort of partnership arrangement was made where each of the partners would contribute a specified sum monthly. It was Gollehon's responsibility to make the payments on the Longfellow development. Apparently legally proper records were not made of the conveyance from Gollehon to the "partnership" of the interest in Longfellow House and Gardens. For some reason Gollehon ceased making payments to Stubblefield in early 1975. Eventually Stubblefield, who apparently felt he was dealing only with Gollehon as an individual or was not aware of Gulf Coast Properties Group, let Gollehon out of Gulf Coast Properties Group, let Gollehon out or the Longfellow deal. Through some variety of agreements, which I do not understand, Gollehon was to be conveyed the ownership interest in five lots in Perry Park and another condominium in Mexico. In November, 1975 Gollehon then wrote all the partners a letter indicating, that in their best interests, he had exchanged the Longfellow development for the Colorado lots and the condominium in Mexico. In the meantime of course all the partners had continued making payments to Gollehon. It is important to not that Gollehon claims that at least Rose, due to their both being in Denver and to their other business relationship which will be explained fully below, knew everything that was going on.

Also during 1975 Gollehon was providing some significant financial backing to Group Legal Services of America, Inc. of which Michael Rose was president. During this period of time Group Legal Services was engaging in a large scale promotional effort for prepaid group legal insurance in several states across the country. A great deal of notoriety was given both to Group Legal Services and to Mr. Rose. It was a for-profit venture for which investors were being sought at a promised 12% rate of return on investment. In late 1975 Group Legal Services was on the eve of assigning its first contract, one with the Brewery Workers Local, when Gollehon failed to keep his prior commitment for continued financing of the endeavor. Group Legal Services failed financially. Rose was publically and privately embarrassed, and furious with Gollehon. These events occur-

red at just about the same time that Gollehon had written the Gulf Coast "partners" and informed them of his recent deal exchanging the partnership's interests. When the Gulf Coast partners, of which Rose was one, began to contact one another because of the suspicious character of Gollehon's deal, Rose became an active participant in the controversy.

During the next two months (December, 1975 and January, 1976) the "partners" exchanged correspondence with one another airing their suspicions and expressing their desire to present a united front in confronting Gollehon. Letters were also written to Gollehon demanding an explanation and requesting the long ago promised partnership documents and evidence of assets. A critical letter, in my opinion, during this period was one written by Donald Peppers on January 6, 1976 to all the partners. The letter is a call to action and in pertinent part states:

> It so happens that one of the partners, Mike Rose, is a lawyer who lives in Denver, where any process whould have to be served on Ron. Mike has just taken the bar exam in Colorado (he is licensed in two other states already), he has time on his hands and, coincidently, he is one of the partners who feels particularly slighted by Ron's actions as managing partner . . . . . (The letter goes on to discuss various other alternatives with various individual partners taking the lead) . . . .
>
> . . . . To my knowledge, Mike Rose is the only partner who resides in Colorado, where any court action against Ron would have to take place, but Mike has little experience in real estate, tax law, accounting or investment practices.

The letter concludes indicating that if individuals are interested in pursuing the matter they should write. More correspondence among the partners followed along with a rather lame letter (2/10/76) from Gollehon to the partners trying to explain the situation. On February 13, 1976 Rose wrote

Gollehon about a variety of matters including disputes between them over possession of certain personal matters, their Gulf Coast Properties dispute, and the Group Legal Services dispute. The letter was signed "Michael T. Rose, Esq." although the heading on the letter contained only his typed name without the "Esq." designation. On the same date Rose wrote Mr. Stubblefield an extensive letter demanding extensive information about Stubblefield's business relationship with Gollehon. The letter is written "on behalf of myself and others" and both the heading and signature are in the name of "Michael T. Rose, Esq." Next Rose wrote a February 24, 1976 letter to each of the partners offering a choice of action and suggesting that he and his firm take action on behalf of the partners. Certain portions of this letter are of critical interest:

> . . . because apparently I am the only "partner" in Colorado and the only lawyer in the group, our collective interest might best be served by Gulf Coast Properties and its members being represented by me and my law firm (Saunders, Snyder, Ross & Dickson, P.C.) here in Denver. Three of the partners have requested or suggested that we do so.
>
> If the partners want us to represent them, we would do so on these terms. The firm, with my having primary responsibility, would evaluate and analyze the facts regarding what has happened to our money; would report to the known members of the "partnership" the status thereof and our option and remedies; and would take whatever remedial action agreed upon by the "partnership" as being in our best interests.
>
> To represent the partnership, the firm will require a retainer timely, normally of $500 against which actual costs and fees for attorney time would be credited. My time is billed by the firm at $35 per hour ($60 an hour for military cases).

. . .

> I suggest that everybody send to the firm $70 for me and the firm to represent your interests in this matter. I will pay my share in donated time, working as an attorney on the case. When the firm has received a total of $425, we will formally begin to represent you coordinating our efforts with the SEC's.

The letter was on the Saunders firm stationery and contained the firm's name immediately above Rose's signature.

It is difficult to assess what impact this letter had upon the other partners. Captain Winborn indicates that the four "partners" represented by him, probably at the time were given the impression that Rose was a Colorado attorney. It was because Winborn knew that Rose still had not taken the Colorado Bar that he was able to inform them to the contrary. Winborn advised his clients not to send in the authorization, principally because he questioned Rose's good judgement (including the solicitation tone of the letter) and, more importantly, because he knew of Rose's conflict with Gollehon regarding Group Legal Services and felt that Rose's interest in this regard could easily conflict with the interests of the partners in the Gulf Coast Properties controversy.

Significantly a number of the "partners" (at least four of five) who appeared as named plaintiffs in the civil action subsequently never returned the authorization forms. (Suit was filed in Arapahoe County District Court. Richard Dally was the attorney of record. Klaus Schafer, mentioned in Miguez's complaint, is one of the unauthorized named plaintiffs.)

In the meantime Peppers wrote to the partners, Rose claims without his permission, urging them to go along with Rose's request and enclosing an authorization form.

In early March Rose contacted Wilson Miguez who was Gollehon's accountant and requested an accounting. It is this contact out of which Miguez's complaint against Rose partially arises. Miguez states that he tried to put off Rose's request because it was "tax time" and he had other commitments but that Rose insisted, indicating that he was an attorney representing the partners in the group and that the partners would pay for the accounting. The specific agreement was never the contact and, although not specifically requesting an accounting, never reduced to writing but Rose wrote Miguez on March, 1976 at least confirming the contract, requested a whole lot of information. The letter is on the Saunders firm letterhead and states: "Please be advised that several persons have retained this firm to represent them with regard to complaints they have about the management of Gulf Coast Properties Group. I, too, am an investor in Gulf Coast Properties Group." The letter is signed "Michael T. Rose, Esq." I have never reviewed Miguez's accounting by apparently most of the "partners" found it unsatisfactory. When Miguez presented his bill to Rose, Rose disavowed ever obligating himself or the partners for the accounting.

Shortly thereafter, on March 9, 1976, Rose wrote Gollehon an eight-page letter which reflected a great deal of anger on Rose's part. Most of the letter is devoted to Gulf Coast Properties Group matters but extensive reference is made to Rose's conflict with Gollehon over Group Legal Services of America failure. Again the letter is on Saunder's firm stationery and is signed "Michael T. Rose, Esq."

During the remaining three weeks of March, 1976 several contacts occurred between Rose and either Stublefield or Stubblefield's attorney, Henry Roath. Rose was demanding extensive information from Stubblefield which Stubblefield resisted because they involved relationships in which he was not involved. Stubblefield's correspondence to Rose is addressed to "Michael T. Rose, Esq." and Rose's correspondence to Stubblefield is on Saunder's firm stationery signed in the same way. Mr. Roath recalled Rose suddenly appearing at his office on

Saturday morning during which he spent a full hour discussing the matter with him. Roath states he was given the clear impression that Rose was an attorney with the Saunders firm. There are two letters from Rose to Roath which are on Saunders firm stationery and signed "Michael T. Rose, Esq."There is other correspondence designated as a receiver of a copy which is signed in the same way. Roath's correspondence back to Rose was also addressed in the same manner. However, there is an April 13, 1976 letter from Roath to Rose which reflects Roath;s discovery that Rose is not a Colorado attorney and expressed his puzzlement because Rose's correspondence had referred to the Saunder's firm as "our law firm." The letter further relates to the fact that the Saunders firm had represented Colorado Western in regard to certain water rights and other related matters and that, if Rose was connected with the Saunders firm, it would be improper for him to represent an interest adverse to Mr. Stubblefield since he was a controlling person of Colorado Western Development. Oddly Roath's letter is still addressed to Rose as "Michael T. Rose, Esq."

On or about April 12, 1976 a meeting occurred in the Saunders' offices among Gollehon, Wilson Miguez, Rose and Doug Bragg as Rose's attorney at least insofar as the Group Legal Services controversy. The meeting discussed the whole range of controversy with Gollehon from certain personal property disputes to matters concerning Gulf Coast Properties Group and Group Legal Services of America. The meeting and subsequent correspondence from Rose to Al Zinn, Gollehon's attorney, indicate continued mixing and combining of the various controversies with Gollehon wherein Rose's intersts differed or could have differed from those of the people that he claimed to represent.

During this period of time Rose also made complaints about Gollehon's activities to the SEC and the Colorado Labor

Department. These complaints are the partial subjects of th complaints made to this Board about Rose by David L. Worstell, an attorney associated with Al Zinn, and who apparently also is a friend of Gollehon. Worstell's complaints are that Rose's complaints involve intentional misrepresentations of fact concerning the form of the different entities, which were material because they involved matters of agency jurisdiction. For instance, he claims that Rose told the Colorado Department of Labor and Employment that Group Legal Services of America was a sole proprietorship belonging to Ron Gollehon and that Gulf Coast Properties was a limited partnership when in fact it was a general partnership. Personally, I think the question, of what Gulf Coast Properties Group was, is till up in the air.

Somewhere along the line Rose hired Richard L. Dally as an attorney to file suit on behalf of the Gulf Coast Properties parners against Gollehon. Dally also filed suit on behalf of Group Legal Services of America, Inc. against Gollehon and a person by the name of John W. Armeson. (Armeson sent to the Board a statement dated April 28, 1976 calling Rose unfit for admission to the Colorado Bar.) Dally sent a bill for his services to the Saunders firm which, as the Board knows more fully than I, resulted in the Saunders firm stating that Rose never had authority to hire Dally. It would be interesting to know who in the Saunders firm was the lawyer supposedly responsible for the Gulf Coast Properties advice and representation.

OTHER RELEVANT CONSIDERATIONS

Affidavits submitted to the Board, at its request, by Charles R. Fredrickson, then Chairman of the CBA Ethics Committee, Ed Felter, Assistant Attorney General who prosecutes disciplinary and unauthorized practice of law matters, and myself clearly establish that Rose called around to check on the

ethics of the situation. There are certain aspects about my telephone contact with Rose that I don't recall for instance the date and the exact details of the sequence of the conversation. There are other aspects which I recall most vividly, for instance Rose's verbosity, his insistent manner, his tendency to argue about the slightest difference, and his apparent selective listening ability, to hear what he wants to hear and disregard the rest. When I talked with him I recall becoming guarded and heavy-handed in my conversation.

The Board's file is filled with over thirty (30) affidavits in support of Rose's application, just since the fitness inquiry took some special direction. The general thrust of the affidavits is that Rose is honest, zealous and courageous and that he has not misrepresented himself as an attorney. Interestingly some of these affidavits or statements are internally inconsistent: for example the 4/28/76 statement of John Scott Sturman states: ". . . Neither in this letter nor at any other such time, has Mr. Rose misrepresented that he was a member of the Colorado Bar. I obtained his legal services because he could deal with the matter expediently. . . .I have been quite satisfied with Mr. Rose's handling of the case to date." In my view the language of this letter is illustrative of an attitude that is part of the problem: if Mr. Rose meant to help and do good and he had the technical training, the matter of license and status is only a technicality.

The complaints against Rose's admission are from persons in these controversies sympathetic to or aligned with Gollehon.

CONCLUSIONS

Mr. Rose clearly misrepresented his status as a Colorado lawyer in the letter to Colonel Zbar.

The telephone conversation with Captain Watts, if Captain Watts' affidavit is to be taken at face, also involved actual

misrepresentation. I don't know to what extent it matters that it was a military justice matter, where State Bar admissions are not as material.

The reference in the Comptroller General's opinion can probably be disregarded as due to any number of mistaken assumptions.

The Gulf Coast Properties Group controversies reflect the following patterns of conduct: (1) Between January and April, 1976 Mr. Rose habitually signed his name "Michael T. Rose, Esq." on business and legal correspondence regarding the matter. During the early period, his use was on plain stationery with a Denver address; later, and perhaps most significantly, when he was hired by the Saunders firm his use was on the lawyer firm's stationery. The pattern of use might suggest consistent error or carelessness. However, my impressions of Mr. Rose are that he is a person very conscious of role and status and that, therefore, his actions in that regard were conscious. The result was that on some occasions, people were misled about his status as an attorney in situations where that was an important factor. The word "misled" is used to emphasize that it may have been more a matter of lack of candor by omission and manipulation than calculated, outright deception. (2) Mr. Rose also solicited legal business for either himself of for the firm where he was employed. It would be argued as an excuse that the partners were "close friends" and the situation, due to the allegations of fraud, demanded immediate action. (3) In my opinion Mr. Rose was obligated during his dealings to clarify for others his role, status and interests. He did not take reasonable steps to achieve this understanding. (4) Mr. Rose apparently failed to recognize any potential conflict between his interest in the controversy with Gollehon over Group Legal Services of America and his acting in any representative capacity for the "partners" in the Gulf Coast Group. I did not see

any evidence of recognizing the question or disclosure concerning it.

It appears that Mr. Rose's conduct raises questions of fitness under C.R.C.P. Rule 212(4) (irresponsibility in business or professional matters), (6) (advising on legal matters for compensation without a license), and (7) (violating reasonable rules of conduct governing an activity in which he is engaged).

Respectfully submitted.

RICHARD F. HENNESSEY
Committee Counsel

RFH:mk

Enclosed file organized as follows:

Court and Board Correspondence and Transmittals
Complaints
Affidavits
Gulf Coast Properties Sequence
Affidavits of Felter, Fredrickson and Hennessey
Group Legal Services of America, Inc. Materials
Newspaper Clippings.

APPENDIX K

ROGER CISNEROS
State Senator
1456 South Xavier
Denver, Colorado
80219

COMMITTEES

Member of:
Appropriations
Education
Finance
Local Government

Senate Chamber
State of Colorado
Denver

REPORT: By Roger Cisneros

TO: Bar Committee

The committee charged me with responsibility of looking at the charges made by certain individuals against Michael Rose an applicant for membership to the Colorado Bar.

I have previously submitted a report indicating my opinion that charges against Mr. Rose were not supported by evidence. This was done after hearing evidence by numerous witnesses and after viewing approximately 100 exhibits.

After that report was submitted another complaint was received against Mr. Rose charging him with failure to pay a bill owed to a C.P.A. by the name of Wilson Miguez.

I have discussed this matter both with Mr. Miguez and Mr. Rose. I am attaching a copy of a letter from Mr. Rose to me, and a copy of a letter from Mr. Rose to Mr. Miguez.

This appears to be a continuing saga of the problems with

Gulf Coast Properties Group of which Mr. Rose is a general partner. I don't see anything new in the new complaint that has not been covered in previous hearings.

Whether Mr. Rose owes money to Mr. Miguez, I believe, can be handled as a civil matter in a court of law.

Mr. Miguez indicated to me that he had written requests from Mr. Rose to provide the services for which he is charging and indicated he would mail same to me. To date, this has not been received.

I would strongly recommend that we arrive at some decision in this matter. In my opinion, nothing that has been brought up against Mr. Rose is sufficient to prevent him from being admitted to the Colorado Bar.

/s/ Roger Cisneros

APPENDIX L

AFFIDAVIT

STATE OF COLORADO

CITY AND COUNTY OF DENVER

I, Michael T. Rose, attest as follows:

1. I am the Michael T. Rose who was denied admission to the Bar of the Supreme Court of Colorado on January 6, 1977. I also am the petitioner **in the matter of the application of Michael T. Rose for Admission to the Bar of the State of Colorado.**

2. Upon information and belief, I am a member in good standing of the bars of Colorado, California, Minnesota, Pen-

nsylvania and South Carolina; and of the United States Supreme Court, the United States Court of Military Appeals, the United States Court of Claims and the United States District Court for the District of Minnesota.

3. On February 1, 1977, Kenneth K. Kripke, my former attorney, and I met with the Honorable Justice James K. Groves. I requested this meeting shortly after I was denied admission to the Colorado Bar. In this meeting Justice Groves responded to my inquiries as to why I was denied admission in light of all the evidence in the record showing my good character. Justice Groves stated that a report by Richard F. Hennesey, dated September 24, 1976, to the Bar Committee of the Colorado State Board of Law Examiners, was "what sank" me. After this meeting Justice Groves gave me a copy of this report by Richard Hennessey, which I never before had seen.

4. My denial of admission to the Colorado Bar and the Committee's findings and their widespread publication have caused me extreme emotional anxiety and distress; irreparable loss of opportunities and damage to my professional and personal reputations; ongoing and increasing interference with my attempts to practice and to secure employment in the business and legal professions; a reluctance in others to believe my word and respect my integrity; and a definite chilling effect on my ability and inclination to represent my clients zealously and effectively and publicly to express my views. Some of the specific losses and problems I have suffered are the following:

A. In 1976 I served as Chief Civilian Defense Counsel representing over one hundred cadets accused of violating the Cadet Honor Code of the United States Military Academy ("West Point"). In this capacity I directed the efforts of approximately sixty civilian and military attorneys, negotiated directly with the Secretary of the Army, testified before a subcommittee of the House Armed Services Committee, lobbied Senators and Congressmen, was involved in numerous press

conferences, and prosecuted lawsuits in three federal courts. This representation required me to retain the confidence of my clients and the many people with whom I was interacting in order to represent my clients.

In approximately August, 1976, two military defense attorneys, who also were representing West Point cadets, asked me for information about the proceedings then pending regarding my admission to the Colorado Bar. I expressed shock that they knew anything about these supposedly confidential proceedings and asked them the source of their information. They said that they had learned about the Colorado proceedings from Army officials they would not identify. They expressed concern that if information about those proceedings became more widely publicized,the cadets' defense may be jeopardized. As a result of this inquiry I called Senator Roger Cisneros, whom I understood was charged with investigating the complaints against me. I explained that an inquiry had been made about the Colorado proceedings and asked him if he had any idea how much more time would elapse before a final decision was made. Senator Cisneros said that I should not worry because he had made a recommendation to the Committee that I be admitted, which he believed would be approved at an upcoming meeting of the Committee, and that he was confident I would be admitted. I communicated Senator Cisneros' statement to the two Army officers who had questioned me and, I believe, I was able to retain my position only because I convinced the two attorneys that the Colorado proceedings would remain confidential, were pending with no adverse findings against me and probably would be resolved in my favor.

B. In September, 1976, I appeared in a panel discussion on a cable television program sponsored by the University of Virginia. The subject was the possibility, if any, of a major cheating incident and breach of the honor code at the University of Virginia occurring as had occurred at West Point. After

this program ended, the moderator informed me that an Army Lieutenant, who also had appeared on the program, had informed her before the program of the pending Colorado proceedings in an apparent effort, she said, to cause her to question me about the Colorado proceedings during the upcoming program. She said that she did not do so because she thought it was not within the scope of the planned discussion. Nevertheless, she asked me if I wished to explain why my fitness to practice law was being questioned in Colorado. She emphasized to me that she believed, from what she had observed, that the Army Lieutenant deliberately was giving her information about the Colorado proceedings to induce her to question me about the Colorado proceedings on the television program and thereby to undermine my credibility and to embarrass me.

C. After completing my representation of the cadets at the United States Military Academy, I sought other employment. At that time I was a resident of Colorado and the owner of a house there. Because I was denied admission to the Colorado Bar I was forced to obtain employment in my chosen profession -- law -- in another state: Minnesota.

D. While the Colorado proceedings were pending and also after I was denied admission to the Colorado Bar, and after I had ceased representing West Point cadets full time, I sought employment as an attorney from several private law firms and government agencies. At this time I did not know, and I still do not know, the most appropriate manner of handling the Committee's findings and the denial of admission to the Colorado Bar, with regard to prospective employers. While on the one hand information about the Colorado proceedings is supposedly confidential and therefore presumably would not affect my representation of clients or my status as an employee, on the other hand somehow this information was not remaining confidential and might adversely affect my clients or employers. I chose not to reveal anything about the Colorado proceedings during my initial interviews with prospective employers, but to

disclose them if I was offered a job.

Following this procedure, I received during 1976-77 employment offers from Dewey, Ballantine, Palmer, Wood and Bushby, New York, New York; Curtis, Mallet and Prevost, New York, New York; and the Division of Enforcement of the United States Securities and Exchange Commission, Washington, D.C. When I informed these prospective employees of the Colorado proceedings, Dewey, Ballantine and the S.E.C. "suspended" their offers until the Colorado matters were resolved, and Curtis, Mallet withdrew its offer completely.

The widespread publication of the Committee's findings and my denial of admission to the Colorado Bar have embarrassed me greatly with regard to many other attorneys with whom I have affiliated; greatly deters me from seeking and obtaining employment from prominent law firms or businessess; and largely is responsible for my practicing now as essentially a solo practitioner, living in constant apprehension that once again I will have to answer inquiries about, or to endure stigmatization by, the Committee's findings and the denial of my admission to the Colorado Bar.

E. Tommy Yearout, an Alabama attorney who was representing me in a contract dispute, without prior notice returned to me by mail my entire file and declined to continue representing me because, he said, he had read about the Colorado proceedings in Justice Burger's published dissent to my admission to the Bar of the United States Supreme Court. Mr. Yearout said that other Alabama attorneys would shun associating with an attorney whose admission to a state bar had been denied, who had done the acts I am said to have done in the Committee's findings and who had been criticized by the Chief Justice of the United States Supreme Court.

F. During 1984 I applied for admission to the bars of two states, and disclosed information to them about the Colorado proceedings because I was required by the application form to do so. One of these state's admissions committee has informed me that it will not certify my admission until I prove at a hearing that I have the required character, and that this lack of certification is due solely to information it has regarding the Colorado proceedings and Justice Burger's dissent, because no other information derogatory about me has been provided to that bar admissions committee. This committee has sent me a letter stating that my application to the bar of that state will be held in abeyance until a final determination is made regarding this Petition.

G. For nearly a year I have not heard from the bar admissions committee of the other state to which I applied for admission. I do not know what is causing the delay. I presume that it is waiting for me to inform it about the decision on this Petition.

H. In a letter dated January 11, 1985, I wrote to the Honorable Les Aspin, Chairman of the Armed Services Committee of the United States House of Representatives. I expressed my views regarding the deterioration of the Cadet Honor System at the Air Force Academy, which previously had resulted in the Academy Superintendent suspending the Cadet Honor System for about six months and taking certain other serious actions. By means of which I am unaware, in March, 1985, a copy of this letter was provided to the news media when the Air Force Academy's Board of Visitors was meeting in Colorado Springs, Colorado. Issues raised in my letter were publicized. In response, Senator Barry Goldwater said at a press conference, in an effort to discredit me, the following:

> I was rather surprised in reading the morning papers to see a gentleman's name in there. I think it's part of the duty of the newspaper reporter to look into the background of who's making the requests and the allegations. Now this young man . . . was not admitted to the bar of Colorado on his first try . . .

This quotation was obtained from a transcript of a tape recording made by a newspaper reporter who attended the press conference.

My letter to Congressman Aspin was sent by several other Congressmen to the Honorable Verne Orr, Secretary of the Air Force, asking him to respond thereto. A letter dated April 8, 1985, was sent by General John J. Weaver to each of these Congressmen responding to my letter. Attached to each copy of this response was a copy of an article dated May 9, 1982, in *The Denver Post* revealing that I had been denied admission to the Colorado Bar and some of the findings against me by the Colorado Committee. I believe that this article was provided by the Air Force to these Congressmen solely to discredit me.

5. As one basis for rejecting my application, the Committee concluded that I had misrepresented my status as a member of the Pennsylvania Bar on my application to the Colorado Bar. At no time before my application was rejected was I notified by anyone that this was a charge against me. Had I been notified, I would have explained that I had never lived or practiced law in Pennsylvania; that I took the Pennsylvania exam while stationed at McGuire Air Force Base, New Jersey; that I took the Pennsylvania exam to qualify as an Air Force legal officer, which required that I be a member of any state bar; that I was unaware that I was required annually to complete a registration form; that I was unaware of my suspension and believed, and had no reason to disbelieve, that I was a member in good standing of the Pennsylvania Bar; and that I was reinstated im-

mediately from my temporary suspension merely by completeing a form, without paying any fee.

/s/ Michael T. Rose
June 12, 1985

Suscribed and sworn to before me by Michael T. Rose this 12th day of June, 1985.

Witness my hand and official seal.

My commission expires: 8/28/88

/s/ Susan Ray
Notary Public

APPENDIX M

Personal and Confidential

Memo

December 8, 1976

You will recall that, by reason of acting as liaison between the court and the Bar Committee, I am disqualified in this matter. I will be bringing this matter up at conference at the convenience of the Chief Justice. If we follow the recommendation of the Bar Committee and do not admit Mr. Rose, another action in the federal court can be anticipated.

JKG

Personal and Confidential

Memo

January 5, 1977

TO: The Other Members of the Court
FROM: Groves, J.
SUBJECT: Michael T. Rose

Perhaps the court can take action on this report and recommendation of the Bar Committee.

You will recall that I asked to be disqualified (which request was granted) because I was spending so much time in connection with this matter and in contact with the Bar Committee. For whatever, if anything, my disqualified recommendation may mean, I think that we should adopt the majority recommendation of the Bar Committee. If so, we undoubtedly will have another law suit.

APPENDIX N

SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK

WASHINGTON, D.C. 20543

January 22, 1979

The Honorable James K. Groves
Chairman, Commission on Admissions
2 East 14th Avenue, Room 460
Denver, Colorado 80203

Dear Sir:

Michael T. Rose, a member of the California, Pennsylvania and Minnesota State Bars, has made application to the Bar of this Court. The fact that an attorney may be a member of another bar does not ipso facto entitle him to become a member of the Bar of this Court. The Court makes an independent examination of

the character and fitness of each applicant.

Mr. Rose has advised this office that he recently was denied admission to the Bar of the Supreme Court of Colorado. This office has been directed by the Court to secure any background information that would enable us to evaluate him for admission to the Bar of this Court. Any such information would be greatly appreciated and would be held in the strictest confidence.

Very truly yours,

Michael Rodak, Jr.

Clerk

cc: William Morris, Esq.

National Conference of Bar Examiners

333 N. Michigan Avenue, Suite 1025

Chicago, Illinois 60601

AIR MAIL

APPENDIX O

Supreme Court
State of Colorado
Denver

James K. Groves
Justice

March 5, 1979

Michael T. Rose, Esquire
Robins, Davis & Lyons
1210 Minnesota Building
Saint Paul, Minnesota 55101

Dear Mr. Rose:

Enclosed herewith is a copy of letter of Michael Rodak, Jr., Clerk of the United States Supreme Court, dated January 22, 1979 addressed to me.

Before responding, we wish to have your permission to disclose any information, including particularly any documents, in the files of Mrs. Catharyn A.

Ables or in the Court's files. As mentioned in the third paragraph of my letter to you of December 22, 1978, we do not intend to permit disclosure of letters received since the court's May 1977 order without permission of the senders, nor of confidential memoranda.

In the event that you grant permission, we will advise you of the matters transmitted to Mr. Rodak and give you a copy of the letter of transmittal to him. Upon request, we will furnish to you copies of any matters transmitted to him which you do not already have.

Cordially yours,

s/s James K. Groves

JKG:sc

cc: Mr. Michael Rodak, Jr.
Secretary, Colorado State Board of
Law Examiners

APPENDIX P

SUPREME COURT

STATE OF COLORADO

DENVER

James K. Groves

April 17, 1979

Mr. Michael Rodak, Jr.
Clerk of the Supreme Court
of the United States
Washington, D.C. 20543

Re: Michael T. Rose

Dear Mr. Rodak:

This is in response to your letter to me of January 22, 1979.

I have sorted out, and am not sending to you, matters submitted by persons who have not consented to disclosure thereof, matters which did not relate to the conclusions of the Bar Committee, and a large

number of letters favorably recommending Mr. Rose.

Enclosed herewith are copies of papers, together with a list thereof.

Cordially yours,

/s/ James K. Groves

JKG:lg

cc: Michael T. Rose

LIST OF ENCLOSURES

Report of Bar Committee dated December 27, 1976

Order of January 6, 1977

A petition filed April 8, 1977

Order of April 21, 1977

Affidavit of Michael R. Watts dated June 6, 1975

Affidavit of Edwin L. Felter, Jr., dated April 29, 1976

Statement of Linda M. Miguez dated September 20, 1976

The following letters:

Sender: Michael T. Rose

Addressee: Robert Gollehon

Date: April 8, 1976

Sender: Michael T. Rose

Addressee: Colonel Alan Zbar

Date: April 9, 1976

Sender: Michael T. Rose

Addressee: Al R. Zinn

Date: April 20, 1976

Sender: James K. Groves

Addressee: Michael T. Rose

Date: April 27, 1976

Sender: Charles R. Frederickson

Addressee: Michael T. Rose

Date: April 28, 1976

Sender: Michael T. Rose

Addressee: James K. Groves

Date: May 4, 1976

Sender: William G. Gideon

Addressee: Bar Committee

Date: April 28, 1976

Sender: John Scott Stevenson

Addressee: Bar Committee

Date: April 28, 1976

Sender: Richard L. Dally

Addressee: Mr. Snyder

Date: May 11, 1976

Sender: Willard S. Snyder

Addressee: Colorado State Board of
Bar Examiners

Date: May 13, 1976

Sender: Michael T. Rose

Addressee: Board of Law Examiners

Date: May 19, 1976

Sender: James K. Groves

Addressee: Michael T. Rose

Date: May 21, 1976

Sender: Michael T. Rose

Addressee: Willard Snyder

Date: May 24, 1976

Sender: James K. Groves

Addressee: Michael T. Rose

Date: May 26, 1976

Sender: Michael T. Rose

Addressee: James K. Groves

Date: May 28, 1976

Sender: Michael T. Rose

Addressee: Bar Committee

Date: May 28, 1976

Sender: Michael T. Rose

Addressee: Glenn Saunders

Date: May 28, 1976

Sender: Michael T. Rose

Addressee: Willard Snyder

Date: May 28, 1976

Sender: Michael T. Rose

Addressee: Willard Snyder

Date: June 1, 1976

Sender: Richard F. Hennessey

Addressee: Bar Committee

Date: June 2, 1976

Sender: Ronald D. Gollehon

Addressee: To Whom It May Concern

Date: September 24, 1976

Sender: Elizabeth L. Emerson

Addressee: William H. Morris

Date: October 4, 1976

Sender: John W. Herron

Addressee: William H. Morris

Date: October 25, 1976

Sender: Pennsylvania Court Administrator

Addressee: John W. Herron

Date: October 22, 1976

Sender: Michael T. Rose

Addressee: Robert Hargrave

Date: February 24, 1976

Sender: Michael T. Rose

Addressee: Ronald D. Gollehon

Date: March 9, 1976

Sender: Michael T. Rose

Addressee: Mr. Hargrave

Date: March 5, 1976

Sender: Michael T. Rose

Addressee: Wilson Miguez

Date: March 19, 1976

Sender: Michael T. Rose

Addressee: Robert Hargrave

Date: April 1, 1976

APPENDIX Q

SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK

WASHINGTON, D.C. 20543

November 27, 1978

Michael T. Rose, Esq.
c/o Robins, Davis & Lyons
1210 Minnesota Building
St. Paul, Minnesota 55101

Dear Mr. Rose:

Receipt is acknowledged of your letter of October 30, 1978, together with your application for admission to the Bar of this Court.

You state in your letter that you are in the process of re-applying for admission to the Bar of the Supreme Court of Colorado. I have been instructed by the Court to hold your application pending

action on your re-application to that court. Please inform this office when such action is taken and your application will be redistributed to the Court.

Very truly yours,

s/s Michael Rodak, Jr.

Clerk

APPENDIX R

AFFIDAVIT

STATE OF COLORADO)

) ss.

City and County of Denver)

JORDAN HOCHSTADT and RICHARD S. STRAUSS, each of lawful age, and each being duly sworn upon his own separate oath, depose and say:

1. That they are members of the law firm of Hochstadt, Straw & Strauss, P.C. Each is duly licensed to practice law in the State of Colorado. The Supreme Court Registration Number of Jordan Hochstadt is 106, and the Supreme Court Registration Number of Richard S. Strauss is 7916.

2. In January, 1977, Michael T. Rose, Esq. was denied admission to the Bar of the State of Colorado. From approximately April, 1977 through 1981, the firm

represented the interests of Mr. Rose before the Supreme Court of the State of Colorado with regard to the efforts of Mr. Rose to gain admission to the bar of the State of Colorado after such initial denial.

3. That during the course of such representation, Michael T. Rose, pro se, filed a petition and a subsequent amended petition seeking admission to the bar of the State of Colorado.

4. In response to said petition and amended petition the office of the Disciplinary Prosecutor of the State of Colorado filed a Special Report wherein allegations of wrongful conduct on the part of Michael T. Rose were made.

5. Said allegations, if true, might have formed the basis for a denial of Mr. Rose's petition and amended petition

for admission to the bar of the State of Colorado.

6. After the Special Report was filed by the Disciplinary Prosecutor, Affiants, on behalf of Mr. Rose, attempted to conduct discovery concerning the factual basis for the allegations of wrongdoing contained in said Special Report.

7. In December, 1979, Affiants were advised by the office of the Disciplinary Prosecutor that documentary evidence supporting the allegations contained in his special Report were obtained by the Disciplinary Prosecutor from a file kept and maintained by the late Honorable James K. Groves, then Justice of the Colorado Supreme Court. ("Groves File") Affiants were further advised that the Groves File concerning Michael T. Rose was a separate and distinct file from the files concerning Michael T. Rose maintained by the

Colorado Supreme Court and the State Board of Law Examiners.

8. In January, 1980, Affiants, on behalf of Mr. Rose, filed a formal request to produce from the Groves File the documents which formed the basis of the allegations contained in the Special Report. In response to said request, Special Prosecutor Kane declined to produce the documents contained in the Groves File on the ground that said documents may be privileged.

9. Affiants requested that the then Special Master, James T. Bunch, compel the production of said documents. Special Master Bunch advised Affiants that, after consulting with Justice Groves, the request to compel production of the documents from the Groves File was denied. The reason announced for such denial was that Justice Groves believed he was in

possession of certain materials which were sent to him "in confidence" and Justice Groves declined to waive whatever privilege may have attached to such documents contained in his file. It was implied, however, that if the undisclosed authors of such written materials contained in the Groves File would waive the privilege, then Justice Groves would presumably make such materials available.

10. That during the deposition of Congressman Charles H. Wilson, taken in connection with the amended petition of Mr. Rose and Special Report of the disciplinary prosecutor, it was disclosed that Congressman Wilson had sent letters and perhaps other written material concerning Michael T. Rose to Justice Groves; that Congressman Wilson had sent such documents and correspondence "in confidence"; and that Congressman Wilson declined to waive

whatever privilege may attached to said correspondence and other written material.

11. That on or about January 20, 1980 Special Master Bunch at the express request of Affiants entered an Order that all proceedings concerning Mr. Rose's admission to the Bar of the State of Colorado be confidential.

12. That said Order, entered on January 20, 1980, was requested by Affiants so that Affiants could conduct discovery without fear that deponents and witnesses would discuss the factual allegations made against Mr. Rose with those who had no reason to know of such proceedings, except to cause harm to Mr. Rose.

13. In October of 1980, Special Master Bunch disqualified himself from further proceedings in the case because certain factors existing at the time of

his appointment may have given rise to the appearance of impropriety for his continuing to act as a Special Master. Notwithstanding the disqualification of Special Master Bunch, the order concerning confidentiality has not been vacated, although Affiants and Mr. Rose have waived their right to keep the proceedings confidential and although the order may have been void ab initio, having been entered by a Special Master who was disqualified to act.

Further Affiants sayeth naught.

_____

Jordan Hochstadt

SUBSCRIBED AND SWORN TO before me this 11th day of June, 1985 by Jordan Hochstadt.

WITNESS MY HAND AND OFFICIAL SEAL.

/s/ Brenda S. Riley

Notary Public

2043 York Street

Denver, Colorado 80205

My Commission Expires:

Nov. 23, 1987

/s/ Richard S. Strauss

SUBSCRIBED AND SWORN TO before me this 11th day of June, 1985 by Jordan Hochstadt.

WITNESS MY HAND AND OFFICIAL SEAL.

/s/ Brenda S. Riley

Notary Public

2043 York Street

Denver, Colorado 80205

My Commission Expires:

November 23, 1987

APPENDIX S
The United States LAW WEEK
50 LW 3714
3-9-82

NO.____. In re Admission of Rose. The application for admission is granted.

Justice Stevens, concurring.

If the Chief Justice is correct in his opinion that the question "whether an applicant appears to be of good moral and professional character is a matter for this Court to decide independently," post, at 3-4, then the Court should take steps to provide an applicant a fair hearing on that question. Until such steps are taken, I shall continue to rely on the actions of the respective state bars and state courts, for they are in a much better position than we are to judge the character and fitness of their own practitioners. Rubber-stamp approval of the cer-

tification by the highest court in a State is not likely to cause any serious harm to anyone. The same cannot be said, however, for ad hoc, ex parte evaluation of an applicant's character.

Chief Justice Burger, with whom Justice O'Connor joins, dissenting.

Applicant. Michael T. Rose, applied for admission to the Bar of this Court on October 27. 1978, almost two years after he was denied admission to the Colorado bar. We denied his application for admission on May 12, 1979. Subsequently, he was admitted to the Colorado bar on May 22, 1981, and shortly thereafter petioned this Court for reconsideration of his application.

An applicant for admission to the Supreme Court must convince the Court that he is "of good moral and professional character." Supreme Court rules, Rule 5.1. After examining the numerous documents submitted by Rose and by the State Bar of Colorado, I cannot conclude that he appears to meet the standards articulated in our Rule 5.1: accordingly, I dissent from his admission.

Rose applied for admission to the Colorado bar in December, 1975. He took the Colorado bar examination in February 1976, and received a passing score. While his application was pending, "several complaints bearing upon his ethical, moral and professional qualifications were received by the (Colorado) Supreme Court and the Colorado State Board of Bar Examiners." Report of the Bar Committee at 1. The Committee then conducted an investigation and recommended that Rose be denied admission to the Colorado bar for several reasons. The Committee first found that Rose misled the bar on his application by stating that he was a member in good standing of the Pennsylvania and California bars when, in fact, he had been suspended from practice in Pennsylvania. This

alone would not justify denial of admission to the Bar of this Court: Rose had been a member of the Pennsylvania bar and was suspended for failure to pay dues, an understandable default. The other reasons for the Committee's adverse recommendation -- and the facts surrounding those reasons -- are much more troubling, and lead to the conclusion that Rose's professional conduct does not meet the standards the Court should require of one of its officers.

The Committee found that Rose misrepresented himself to clients and potential clients as an attorney licensed to practice in Colorado. In April, 1975, Rose, himself a graduate of the United States Air Force Academy and a member of the bar of the United States Court of Military Appeals, moved to Colorado to represent Air Force Academy cadets charged with honor code violations. Following completion of that representation, in January 1976, Rose began employment as a law clerk with a private law firm in Denver. Even though he was not admitted to practice in Colorado, he wrote several letters on the law firm's stationery distinctly giving the impression that he was a licensed attorney. In one of the letters he stated that he was "a civilian attorney practicing law in Denver . . ." In another, he urged other members of the Gulf Coast Properties Group, a real estate venture in which Rose held an interest, to hire him and his firm to represent them in a suit against the managing partner of the group:

> Because, apparently, I am the only 'partner' in Colorado and the only lawyer in the gorup, our collective interests might best be served by Gulf Coast Properties and its members being represented by me and my law firm (Saunders, Snyder, Ross & Dickson, P.C.) here in Denver. (Emphasis added)

Two of the letters included in the state bar's files were signed "Michael T. Rose, Esq."; none of the letters disclosed that Rose was not licensed to practice law in Colorado.

The Committee concluded that Rose: had failed to inform the other members of the real estate venture of possible conflicts of interest in representing them, that he authorized the filing of a suit on behalf of the group without authorization, and that he hired another attorney to file the suit and told the attorney to bill Rose's law firm without authorization from the firm.

> "engaged in a pattern of conduct evidencing irresponsibility in professional matters in that he was suspended from the Bar of Pennsylvania . . . continued lack of candor in business and professional matters concerning his not being a member of the Bar of Colorado; (and) continued violation of reasonable rules of conduct in his capacity as a law clerk and in work on legal matters in his assoication with a Colorado law firm."

As I have stated with respect to other applicants, determination of whether an applicant appears "to be of good moral and professional character" is a matter for this Court to decide independently; it is not a matter in which we should casually and routinely "rubber stamp" the actions of State.

See e.g., In the Matter of Admission of Leda M. Hartwell,____S. Ct.____(1981); In the Matter of Admission of Benjamin R. Patterson, 101 S. Ct. 2301, 2303 (1981); In the Matter of Admission of James J. Caplinger, 101 S. Ct. 2303, 2305 (1981)'Taken as a whole, Rose's activities in Colorado before he was admitted to the bar of that state do not satisfy me that he meets the standards prescribed by our rules. See Schware v. Board of Bar Examiners, 353 U.S. 232, 247 (Frankfurter, J., concurring).

Moreover, it seems "the applicant seeks admission merely to receive the 'stamp of approval' from this Court indicating that he has been in some ways 'vindicated' and cleansed of the

stigma of his challenged prior conduct, a practice of 'laundering' that has become all too frequent in recent years." In the Matter of Admission of James J. Caplinger, supra, at 2306. Admission to the Supreme Court Bar may very well be seen by the public as an imprimatur of high stature in the legal profession. See In the Matter of R____ M.J.____,____ U.S.____ (1981).

Accordingly, I dissent.

[1]The Colorado Supreme Court adopted the Committee's recommendation and denied Rose's application for admission on January 6, 1977.

[2]Under the rules of the Colorado Bar, a person with legal training not a member of the Colorado Bar may be employed as a law clerk under the supervision of a Colorado attorney. This is the status accorded to persons (such as Rose) who are members of the Bar in other jurisdictions but not in Colorado.

[3]Rose's failure to indicate that he was not a licensed attorney was not merely a result of ignorance of the requirements. He made repeated inquiries of state bar counsel as to his practice rights as an attorney not licensed to practice in Colorado. The counsel told Rose that he would be considered a law clerk until he was admitted to the Colorado bar, and that he emphasized to Rose that "If (a) law clerk is going to be dealing with clients or the public, it is most important for the law clerk to take the initiative to disclose his or her non-lawyer status so that others are not misinformed or misled by making erroneous assumptions about the law clerk's position, status, authority or responsibility."

[4]Our Rule 5.1 is explicit and unambiguous in requiring this Court to make its own independent evaluation of an applicant's "normal and professional character." Of course the action of a state bar is entitled to some consideration. But see ABA Special Committee on Evaluation and Enforcement, Problems and Recommendations in Disciplinary Enforcement I (1970). (Chaired by Justice Tom C. Clark), finding that "(d)isciplinary action is practically nonexistent in many jurisdictions". It should be noted that the factual basis of this dissent comes totally from the application for admission itself plus supplemental information submitted at the Court's request by the applicant and the state bar.

Because as Justice Stevens notes, ante, the Court does have to make an "ad hoc, ex parte evaluation of an applicant's character," each Justice must evaluate the record independently. It can hardly be said that those whose evaluation differs from that of the majority can be denied the right to dissent from the Court's action.

APPENDIX T

The Washington Post

Tuesday, March 9, 1982

Stevens Criticizes Burger, O'Connor

For Attacking Bar Applicant

By

Fred Barbash

Washington Post Staff Writer

Supreme Court Justice John Paul Stevens yesterday sharply criticized two of his colleagues for attacking the character of an applicant to the Supreme Court bar without giving him a chance to defend himself.

Chief Justice Warren E. Burger and Justice Sandra Day O'Connor had publicly objected to the admission of a lawyer because of disciplinary actions once taken against the applicant in his home state of Colorado.

A $100 fee, a decent reference and admission to a home state bar admit a lawyer to the Supreme Court bar. The lawyer, in turn, receives a fancy certificate and the right to practice before the court.

The whole process is generally routine. In the past year, however, Burger periodically has published written dissents from an admission when he finds something objectionable about an applicant, saying that he objects to the use of the Supreme Court "imprimatur" to gloss over unethical activities.

The dissents became part of the permanent record of Supreme Court proceedings, distributed across the country to law firms and law libraries.

Yesterday Stevens became the first justice to challenge the practice. "Rubber-stamp approval" of an applicant "is

not likely to cause any serious harm to anyone," Stevens wrote. "The same cannot be said, however, of ad hoc, ex parte [one-sided] evaluation of an applicant's character" by members of the Supreme Court.

If Burger thinks the Supreme Court should judge each person separately, Stevens said, "then the court should take steps to provide an applicant a fair hearing...."

The exchange stemmed from one of two admissions Burger complained about yesterday. The chief justice, joined by O'Connor, wrote a four-page dissent about an application from Michael T. Rose on the grounds that Rose had once been denied admission to the Colorado bar for misrepresenting his qualifications. Subsequently, Rose was admitted to practice in Colorado.

"The applicant seeks admission merely to receive the stamp of approval from this court indicating that he has been in some way vindicated and cleansed of the stigma of his challenged prior conduct, a practice of 'laundering' that has become all to frequent in recent years," Burger said yesterday of the Rose application.

In response to Stevens' criticism, Burger wrote that each justice must evaluate an applicant independently and added, "It can hardly be said that those whose evaluation differs from that of the majority can be denied the right to dissent from the court's action."

New York Times

March 9, 1982

High Court Justices Differ on Admitting Lawyers to the Bar

By Linda Greenhouse

Special to The New York Times

Washington, March 8 - A dispute flared in the Supreme Court today over admitting lawyers to the Supreme Court bar, providing an unusual public glimpse of disagreements among the justices involving the day-to-day administration of the Court.

Admission to the Supreme Court bar is open to any lawyer "of good moral and professional character" who has been a member of a state bar for three years. Dozens of lawyers appear in the courtroom every month for the brief admissions ceremony, while dozens more take the oath of office on paper and are admitted through

the mail. The current rosters lists 147,943 lawyers admitted since 1925.

Complaints by Burger

For several years, Chief Justice Warren E. Burger has complained publicly about some of the admissions. In written dissents from orders granting admission, he has accused lawyers of seeking membership to the Supreme Court bar to 'launder' their credentials after receiving disciplinary sanctions from their state bars. Last month, he objected to the admission of an Ohio lawyer who had been suspended from the practice of law by an Ohio county court for one year in 1948.

Today, the Chief Justice carried his campaign further. He objected to one lawyer who had received a private reprimand from the Arkansas bar for using an advertisement that, the Chief Justice said, "was designed to entice, not to

inform." Chief Justice Burger appended a copy of the advertisement, which carried the headline, "Need a Lawyer? First Consultation $10," to his five-page dissent.

"I cannot and will not," he wrote, "join in using this Court as an instrument of laundering and 'vindication' of lawyers who engage in shoddy professional practices."

The Chief Justice joined this time in his dissent by Associate Justice Sandra Day O'Connor, then attached the admission of a second lawyer who had been denied admission to the Colorado bar when he initially applied in 1977. While Colorado has since accepted the lawyer, Chief Justice Burger said, "It is not a matter in which we should casually and routinely 'rubber stamp' the actions of a state."

The second time, Associate Justice John Paul Stevens took the Chief Justice on in writing.

If the Court has a question about an applicant, Justice Stevens wrote, it should provide him with "a fair hearing on that question." Without such a hearing, the Court should accept the determination of a state bar and state courts, "which are in a much better position than we are to judge the character and fitness of their own practioners."

The Denver Post

Tuesday, March 9, 1982

Burger Fails To Block Coloradan's Admission

By Jim Mann

Los Angeles Times

WASHINGTON - When Colorado lawyer Michael T. Rose applied for admission to practice law before the Supreme Court, he could not have imagined the sort of wrangling his seemingly mundane request would set off among justices.

Chief Justice Warren Burger issued a written opinion Monday opposing Rose's admission to the bar. Burger said Rose failed to meet the court's requirements of good moral and professional character, primarily because Rose allegedly once had misrepresented himself as a lawyer before he had been admitted to practice in the Colorado courts.

But the Supreme Court refused to go along with its Chief Justice, deciding to admit Rose anyway. And in a brief but biting opinion, Justice John Paul Stevens accused Burger of damaging the reputation of an individual without first giving him a fair hearing.

Rose couldn't be reached for comment today. Despite the chief justice's public comments on his qualifications, a court official declined to release the lawyer's address or telephone number, saying that applications for bar admissions are private documents. A hometown and address for Rose also couldn't be determined Monday night in Denver.

The question of Rose's admission to the Supreme Court bar was the latest in a series of skirmishes within the high court over the proper qualifications of lawyers who practice before the court.

These battles are beginning to be fought amid the sort of acrimony usually reserved for abstract constitutional issues. Admission to the Supreme Court bar is strictly a matter of routine. Any lawyer who has been a member of his state bar in good standing for three years, and who can afford the $100 admission fee, can get a certificate to practice law before the Supreme Court.

Between 4,000 and 7,000 lawyers a year now joint the bar. Over the past 55 years, the court estimates, 147,000 lawyers have become members.

But few members of the public realize how relatively simple the process is. As a result, lawyers often display their certificates of Supreme Court membership prominently in their offices and advertise the membership on business cards and legal

papers, as though they had been admitted to a highly exclusive club.

During the last year, Burger has sought to make the court more selective in admitting lawyers. In several opinions, he has attacked the qualifications of lawyers who applied for admission, complaining that records showed the individuals had engaged in misconduct.

Last June, for example, the chief justice, denounced by name and at length a lawyer who had been suspended from law practice in New Jersey and later reinstated. "In my opinion, a five-year suspension is a per se (automatic) basis for disbarment from this court," he wrote in a dissent.

Until Burger's complaint about Rose, however, the full court had let his dissenting opinions go by without comment.

On Monday, Burger said Rose had been denied admission to the Colorado bar in 1976 and the Supreme Court in 1978. He noted that a state bar committee found Rose had demonstrated lack of candor by failing to inform clients or potential clients that he had not yet been admitted to practice in Colorado.

Burger acknowledged that Rose had subsequently been admitted to the Colorado bar on May 22, 1981. Nevertheless, he said, deciding whether a lawyer meets U.S. Supreme Court standards "is not a matter in which we should casually and routinely 'rubber-stamp' the actions of a state."

"It seems the applicant seeks admission merely to receive the 'stamp of approval' from this court indicating that he has been in some way 'vindicated' and cleansed of the stigma of his challenged prior conduct, a practice of 'laundering'

that has become all too frequent in recent years," Burger wrote.

This time, Stevens decided to defend the court's majority against Burger's dissent. If the Supreme Court is going to re-examine the character of individual lawyers applying for admission, he wrote, "then the court should take steps to provide an applicant a fair hearing."

"Rubber-stamp approval of the certification (of a lawyer's good character) by the highest court in a state is not likely to cause any serious harm to anyone," Stevens said.

He continued, "The same cannot be said, however, of ad hoc (case by case), ex parte evaluation of an applicant's character." An "ex parte" evaluation is one made after hearing from one side of a controversy and without giving the other side an opportunity to respond.

Answering Stevens' criticism, Burger said "The factual basis of this dissent comes totally from the (written) application for admission itself plus supplemental information submitted at the court's request by the applicant and the state bar.

Only Justice Sandra O'Connor signed Burger's dissent. By a formal vote of 7-2 Rose was admitted to the Supreme Court bar.

Rose was one of two lawyers whose admission Burger opposed. Monday, in another opinion, he dissented from the admission of William Evans Benton, a lawyer who had been privately reprimanded by the Arkansas Supreme Court for advertising his services in a mail out "Val Pack" that included discount coupons for restaurants, a health club and a car repair shop.

The chief justice termed the lawyer's ad "pure solicitation" and said it was "more in keeping with selling merchandise than in the profession of law."

The National Law Journal

Monday, March 22, 1982

Two Justices Swap Heated Remarks Over Routine Bar Admission Process

By Kathleen Sylvester

National Law Journal Staff Reporter

TESTY EXCHANGE: U.S. Chief Justice Warren E. Burger, right, is campaigning against "rubber-stamp" admissions to the Supreme Court bar, over the opposition of Justice John Paul Stevens.

WASHINGTON - The admission of a lawyer to the Supreme Court bar - a routine process repeated nearly 6,000 time a year - recently provoked a heated written exchange between two of the court's members.

Chief Justice Warren E. Burger, who has campaigned in recent years against what he calls the "rubber-stamp" approach to Supreme Court bar admission, dissented

from the admission of Colorado lawyer Michael T. Rose.

Noting that applicants must convince the court that they are "of good moral and professional character," the chief justice wrote of Mr. Rose: "I cannot conclude that he appears to meet the [court's] standards."

But in an unusual display of disagreement on court administration, Justice John Paul Stevens, writing in support of Mr. Rose's application, argued that if the court is to make an independent assessment of an applicant's character it should provide the lawyer a fair hearing.

Since 1790, the court has set only two requirements for admission to its bar: acceptable personal and professional qualifications and admission to practice for three years before a state's or territory's highest court. Applicants who meet

these criteria and pay a $100 fee are routinely admitted. Court officials say that while rejections occur, they are uncommon.

"Laundering Conduct"

In his dissent, joined by Justice Sandra Day O'Connor, Justice Burger pointed out that Mr. Rose, now admitted in Colorado, was once denied admission in that state because he misrepresented himself as a licensed attorney. He also wrote that Mr. Rose had "engaged in a pattern of conduct evidencing irresponsibility in professional matters."

Writing that admission to the Supreme Court bar "is not a matter in which we should casually and routinely 'rubber stamp' the actions of a state," the chief justice criticized use of the practice to "launder" an applicant's prior questionable conduct.

Justice Burger also dissented from the admission of an Arkansas lawyer, William Evans Benton, who received a private reprimand from the state bar for using an advertisement that, the chief justice said, is "more in keeping with selling merchandise than the profession of law."

Regarding Mr. Rose, Justice Stevens said that until the court grants applicants a fair hearing, "I shall continue to rely on the actions of the respective state bars and state courts, for they are in a much better position than we to judge the character and fitness of their own practioners." Arguing that while rubber stamp approval of candidates is not likely to cause harm, he wrote that "the same cannot be said of ad hoc, ex parte evaluation of an applicant's character."

But is was the chief justice who had the last word. Taking note of Justice

Stevens' exception, he replied that "each justice must evaluate the record independently. It can hardly be said that those whose evaluation differs from that of the majority can be denied the right to dissent from the court's action."

Colorado Springs Sun

Tuesday, March 9, 1982

High Court Admits Lawyer Over Objections

By Denise Gamine

Sun Washington Bureau

WASHINGTON - An Air Force Academy graduate who later served as an attorney for academy cadets charged with honor code violations was admitted to the U.S. Supreme Court bar Monday despite a stern objection by Chief Justice Warren E. Burger.

The admission of Michael T. Rose, 34, touched off a debate among the justices on how best to evaluate the moral and professional character of lawyers who wish to practice before the Supreme Court.

At issue is whether the high court should conduct its own evaluation of an attorney's qualifications, including

offering the applicant a hearing or whether the justices should rely on the character judgments made by state bars and courts when certifying lawyers.

Berger, noting that the public may view members of the Supreme Court bar as having a higher stature in the legal profession, is pushing for stricter evaluation by the high court.

About 6,000 lawyers are admitted to the Supreme Court bar each year.

Applicants must be qualified to practice before their state's highest court and be "of good moral and professional character."

Rose graduated from the Air Force Academy in 1969 and returned to Colorado in 1975 as a member of the U.S. Court of Military Appeals to represent Air Force Academy cadets charged with honor code violations.

He was admitted to the Colorado bar in May 1981, more than five years after applying.

Admission came after his application to the Colorado bar had been turned down once before.

He was refused admission in 1976 after the Colorado State Board of Bar Examiners had found that Rose had been suspended from the Pennsylvania bar for failure to pay dues and that he had informed clients he was licensed to practice law in Colorado even though he was not.

Rose's mailing address listed with the high court is with the Denver law firm of Hochstadt, Straw and Strauss.

However, Jordan Hochstadt said Rose did not work with the firm.

Burger, joined by Justice Sandra D. O'Connor, issued a four-page dissent contending that Rose did not meet Supreme

Court standards and thus should not be admitted to the bar even though he was a member of the Colorado bar.

"Determination of whether an applicant appears to be of good moral and professional character is a matter for this court to decide independently. It is not a matter in which we should casually and routinely 'rubber-stamp' the actions of a state," Burger said.

That dissent prompted Justice John Paul Stevens, who backed Rose, to state that the high court should provide a "fair hearing" to a bar applicant if it plans to make such an independent decision.

"Until such steps are taken, I shall continue to rely on the actions of the respective state bars and state courts, for they are in a much better position then we are to judge the character and

fitness of their own practioners," Stevens said.

"Rubber stamp approval of the certification by the highest court in a state is not likely to cause any serious harm to anyone."

"The same cannot be said of the evaluations of an applicant's character."

Burger went on to note that it seems Rose "seeks admission merely to receive the 'stamp of approval' from this court indicating that he has been in some way vindicated and cleansed of the stigma of his challenged prior conduct, a practice of 'laundering' that has become all to frequent in recent years."

"Admission to the Supreme Court bar may very well be seen by the public as an imprimatur of high stature in the legal profession," he said.

The Denver Post

March 10, 1982

Lawyer "Offended," Raps Burger Action

By Gary Delsohn

Denver Post Staff Writer

Former Colorado lawyer Michael T. Rose said Tuesday he is "very offended," at Chief Justice Warren Burger's recent charge that he's unfit to practice law before the U.S. Supreme Court.

Rose, a controversial figure who has made headlines attacking the federal government in the past, took strong issue with Burger's accusation that Rose did not possess the required "good moral and professional character" to argue before the high court.

Burger was overruled by a court majority, and was himself criticized by Justice John Stevens for damaging Rose's

reputation without giving him a fair hearing.

But Rose, who still owns a house at 953 Filmore Street in Denver, showed little of the fight that he used against other government officials in defending himself against Burger's charges.

"I'm not sure criticizing a justice for rendering an opinion is going to serve my interests," Rose said in a telephone interview from Charleston, S.C. where he now practices law and runs a video game distribution business.

"This whole thing is a lose-lose proposition for me. No matter what, by being associated with those derogatory comments, I lose. Yet I think it is newsworthy that somebody would vote to deny admission to someone without giving them a fair hearing."

Rose received national publicity in 1973 when he authored an article in a New York University law review charging that the U.S. Military Academy at West Point was illegally "silencing" a cadet suspected of cheating. He also claimed that in the cheating scandal of 1972, Air Force Academy officials forced cadets to admit improprieties.

A short time after the article was published, Rose's entry into the elite Air Force legal division was blocked and he received a series of reprimands.

He soon left the Air Force and his charges were spotlighted in a broadcast of CBS Television's "60 Minutes" in 1974.

A lawsuit he later filed against the Air Force Academy over its refusal to give him copies of cadet disciplinary reports for the law review article resulted in a landmark Supreme Court decision in his

favor concerning release of government documents under the Freedom of Information Act.

Rose, an Air Force Academy graduate, practiced law in Colorado while defending academy cadets charged with violating the Air Force honor code in the mid 1970s.

Tuesday, Rose said he was especially upset that Burger, in a 5-page report issued Monday, made public previously confidential material concerning Rose's earlier difficulty in getting admitted to the Colorado bar.

The 34-year-old Rose had been denied admission into the state bar in 1976 for, according to Burger's report, allegedly representing himself as a lawyer with the Denver firm of Saunders, Snyder, Ross & Dickson when, in fact, he was only a clerk.

After an investigation by the Colorado Supreme Court Grievance Committee, whose proceedings are secret, Rose was admitted to the Colorado bar in 1981.

"What I'm really unhappy about is information the Colorado Supreme Court has identified as confidential has been disseminated publicly in a form which casts negative innuendoes on my character without me ever having a right to defend myself."

APPENDIX U

AFFIDAVIT

I, Donald C. Odegard, Sr., attest as follows:

1. I reside at 3800 Brighton Court, Alexandria, Virginia.

2. I am a Colonel in the United States Army and the father of C1C Donald C. Odegard, Jr., a cadet at the United States Air Force Academy who on or about June 23, 1984, was convicted by court-martial for stealing four $5 bills and sentenced therefor to confinement for two months, forfeiture of all pay and allowances and dismissal from the United States Air Force.

3. I first learned of this charge against my son in February, 1984. During March-April, 1984, Army officers stationed in the Washington, D.C., area repeatedly

mentioned the name of Michael T. Rose as an attorney that my son should get to represent him, citing Mr. Rose's extensive experience with military academy legal matters and an article about the service academies' disciplinary systems written by Mr. Rose and published by the New York University Law Review as qualifying Mr. Rose as an expert in service academy legal matters. However, I was told by some officers, in such a way as to constitute a warning, that Mr. Rose was very controversial and had questionable or bad character because of ethical problems he had had in becoming admitted to the bars of the State of Colorado and of the United States Supreme Court.

4. On April 19, 1984, at 11:10 A.M. E.S.T. I told Robert B. Warren, Esq., a civilian attorney then representing my son, the information about Mr. Rose I had

been told as stated in Paragraph 3 above, and discussed with Mr. Warren the advisability of Mr. Rose becoming an additional attorney to represent my son in his forthcoming court-martial. Mr. Warren replied that the last thing my son needed was to be represented by an attorney who had a bad reputation for character and who was controversial at the Air Force Academy, and strongly recommended against my son or I retaining Mr. Rose to represent my son in this matter.

5. After my son was convicted, my son and I decided that, regardless of the controversy and rumors about the bad character of Mr. Rose, I would find Mr. Rose and discuss the case with him, in a desperate attempt to prove my son's innocence. For several weeks I was unable to find Mr. Rose and I actually thought that the reason that Mr. Rose was so difficult

to find had something to do with Mr. Rose shame, or on restrictions on Mr. Rose, due to Mr. Rose's difficulties in becoming admitted to the bars of the Colorado and the United States Supreme Courts.

6. On August 23, 1984, I first contacted Mr. Rose by telephone and we made arrangements to meet and to discuss my son's case. During our first meeting in early September, 1984, I questioned Mr. Rose extensively about his character and the difficulties he had in obtaining admission to the bars of the Colorado and the United States Supreme Court due to Mr. Rose's bad character.

7. After my initial meeting with Mr. Rose referenced above, my son retained Mr. Rose to represent him along with attorney Robert B. Warren. Since then Mr. Rose has worked on this case extensively--I personally have spent over two

hundred hours working day-to-day with Mr. Rose--and, in my opinion, Mr. Rose has done a superb job finding and documenting errors committed by the government, and otherwise representing my son, in this case. These errors by the government include, incredibly, destroying and failing to preserve exculpatory evidence; numerous instances of perjury; failing to maintain proper chain-of-custody control of physical evidence; secretly putting into evidence an incorrect chemical powder that was not what it was represented to be; giving the defense an incorrect chemical powder that was not from the batch and of the nature represented; and trying to cover up some of the above.

8. As a result of my observation of Mr. Rose's minute-by-minute development of the defense of my son's case, I have

nothing but the highest regard for Mr. Rose's competence, integrity and professionalism.

9. I believe that had I not known about the controversy surrounding Mr. Rose's character due to his difficulties in gaining admission to the bars of the Colorado and of the United States Supreme Courts, I would have contacted and my son would have retained Mr. Rose in April, 1984, instead of in September, 1984, and that with Mr. Rose's representation my son probably would have been acquitted instead of convicted at his court-martial. Indeed, if my son had retained Mr. Rose back in April, 1984, instead of in September, 1984, I believe that the fake evidence used at the trial of my son, and the unavailability of the correct evidence, probably would have been discovered prior to my son's court-martial and, therefore,

my son never would have been court-martialed.

10. There is no question that the rumors about Mr. Rose's bad character due to his difficulties in gaining admission to the Colorado and the United States Supreme Courts caused me and/or my son not to find or to retain Mr. Rose as an attorney until August-September, 1984, and that even when I did initially contact Mr. Rose I had great hesitancy and apprehension about doing so and about whether or not my son and I could trust Mr. Rose. However, based upon my observation and assessment of Mr. Rose, I no longer have any reservation about Mr. Rose and believe that the concern and the apprehension I had about Mr. Rose's character are unfounded.

Further Affiant sayeth not!

/s/Donald C. Odegard, Sr.

DONALD C. ODEGARD, SR.

OCTOBER 30, 1984

Subscribed to and Sworn
before me this 30th day
of October, 1984.

Judith A. Wiles

NOTARY PUBLIC FOR Wash. D.C.

My Commission Expires: November 30, 1988.

APPENDIX V

NEIL A. GOTEINER
FARELLA, BRAUN & MARTEL
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San Francisco, California 94104
Telephone: (415) 954-4400

Attorneys for Respondents

UNITED STATES OF AMERICA
BEFORE THE COMMODITY FUTURES TRADING COMMISSION

MICHAEL T. ROSE,	)	CFTC DOCKET NO.
	)	84-R511
Complainant,	)	
	)	RESPONDENTS'
vs.	)	MEMORANDUM IN
	)	OPPOSITION TO
MONEX INTERNATIONAL,	)	MICHAEL T. ROSE'S

LTD., WILLIAM A. NELLES, JR., and DEAN C. MOLL,	)	MOTION FOR "PARTIAL SUMMARY JUDGMENT"
Respondents.	)	

INTRODUCTION AND SUMMARY OF ARGUMENT

Respondents submit this Memorandum in opposition to complainant Michael T. Rose's motion for partial summary judgment.

There is no support for this motion either in the Reparation Rules, the substantive law or common sense. By way of summary:

1. Reparations Rule §12.310, 17 C.F.R. §12.310, specifically provides methods for moving for summary disposition -- procedures which Michael Rose has ignored entirely. He has supplied no

affidavits or other verified statements demonstrating the lack of genuine issues of material facts. Section 12.308, pursuant to which Rose makes this motion, does not allow Michael Rose to avoid the requirements specifically required by Section 12.310 (infra, at §1.).

2. The issue of unconscionability is singularly inappropriate for summary disposition. It has been universally held by all forums considering this issue, including this tribunal in Zavish v. International Precious Metals Corp., Commodity Futures Law Reports (CCH) ¶21,775 (ALJ Painter, 1983), that the court must sift and weigh the totality of the facts and circumstances surrounding the particular agreement to determine whether the

agreement is unconscionable. 1/ There is obviously no authority that this Tribunal should simply accept Michael Rose's allegations as true 2/ (infra, at §II).

3. Michael Rose has no access to such an unconscionability theory since, notwithstanding public criticism of his

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[1] Geldermann & Co. v. Lane Processing, Inc., 527 F.2d 571, 575 (8th Cir. 1975); Williams v. Walker-Thomas Furniture Co., 350 F.2d 445, 450 (D.C. Cir. 1965); A&M Produce Co. v. FMC Corp., 135 Cal. App.3d 473, 186 Cal Rptr. 114, 126 (1982); Kerr-McGee Corp. v. Northern Utilities, Inc., 673 F.2d 323 (10th Cir.), cert. denied 103 S.Ct. 344 (1982); FMC Finance Corp. v. Murphee, 632 F.2d 413, 419-420 (5th Cir. 1980).

[2] Chief Justice Burger of the United States Supreme Court has noted on Rose's application for admission to practice before that Court that Rose had been found to have "misled" the Colorado State Board of Bar Examiners, had been suspended from practice in Pennsylvania, and displayed a "lack of candor in business and professional matters." In re Admission of Rose, 50 U.S.L.W. 3714 (March 8, 1982).

veracity and professional character, 3/ he is a highly trained and academically distinguished attorney 4/ who, by his own admissions in his Complaint, both reviewed the Monex Commodity Account Agreement (the "Agreement"), and attempted to negotiate clauses in it. After Monex refused to change these clauses Rose continued to trade at Monex and Rose thereby: (a) is estopped from asserting an unconscionability claim; and (b) ratified his trades. Watters v. Thompson McKinnon

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[3]See footnote 2, supra.

[4]Michael Rose informed Neil A. Goteiner, attorney for Respondents, that he was the same Michael T. Rose who was the named petitioner in Department of Air Force v. Rose, 452 U.S. 352, 355, n.1, 96 S.Ct. 1592, 1596, n.1 (1976), in which the United States Supreme Court identified him as a member of the New York University Law Review. See accompanying May 13, 1985 Affidavit of Neil A. Goteiner.

Securities, Commodity Futures Law Reporter (CCH) ¶21,240 (ALJ Painter, 1981) (infra, at §IV).

4. Relatedly, Michael Rose had not even begun to allege, let along demonstrate factually, the necessary causal nexus between the alleged unconscionability and any damages compensated in reparation proceedings (infra, at §IV), and

5. The fact is that the provisions of the Monex Commodity Account Agreement and the Account Agreement in Zavish differ. Michael Rose's bald assertion that both agreements contain "substantial identical provisions" is wrong (infra, at §IIIB).

ARGUMENT

I. THE REPARATION RULES DO NOT PROVIDE FOR A PARTIAL SUMMARY JUDGMENT MOTION

There is no basis in 17 CFR §12.308 for Michael Rose's motion for partial summary judgment. That section provides for an application for relief, "not otherwise specifically provided for in this Subpart E . . ." §12.308(a). But the rules do specifically provide for the "form of relief" sought by Rose in §12.310 governing summary disposition. 5/ That rule provides in pertinent part that:

> Any party who believes that there is no genuine issue of material fact to be determined

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[5] Rule §12.310 provides for a summary disposition of "all issues of liability." Rose cannot escape the requirements of this Rule by styling his motion as one for "Partial Summary Judgment." If the CFTC wanted to contemplate such a variation of §12.310, it would have so provided. Cf. Transamerica Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11, 21, 100 S.Ct. 2442, 248 (1979) (Congress knew how to provide for specific remedies and would have done so if it so intended; Congress should be presumed not to provide for missing remedies).

> and that he is entitled to a decision as a matter of law concerning all issues of liability in the proceeding may file a motion for summary disposition. . . ."
>
> (b) Supporting Papers. A motion for summary disposition shall include a statement of all material facts as to which the moving party contends that there is no genuine issue, supported by the pleadings, and by affidavits, other verified statements, admissions, stipulations and interrogatories."

Since Rose's motion is devoid of all such supporting papers, it must fail. Moreover, even if Michael Rose's two page memorandum could some how amount to the necessary "statement of all material facts," (§12.310(b)), the motion must also fail because the "statement" is utterly devoid of any effort to pinpoint any similarities between Monex's Account Agreement and the IPMC Account Agreement.

II. THE ISSUE OF MONEX'S COMMODITY ACCOUNT AGREEMENT'S ALLEGED

UNCONSCIONABILITY IS A QUESTION OF FACT AND IS NOT APPROPRIATE FOR SUMMARY DISPOSITION

Rose's reliance on Zavish v. International Precious Metals Corp., Commodity Futures Reports (CCH) ¶21,775 (1983) is misplaced. First, Zavish did not hold that unconscionability by itself was a C.E.A. violation. 6/ More basically, the Zavish tribunal repeatedly grounded its holding on the facts and circumstances before it. The Zavish tribunal reasoned:

> "The doctrine of unconscionability is inherent in equitable matters but also finds acceptance in the law. Id.; Gelder-mann & Co., Inc. v. Lane Processing, Inc., 527 F.2d 571, 575 (8th Cir. 1975) . . . Whether a meaningful choice is present in the case of a particular

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6/ Of course, only violations of the C.E.A. or the regulations promulgated thereunder may give rise to liability in reparations proceedings.

> agreement is determined by a consideration of the totality of circumstances surrounding the negotiation and execution of the contract, the respective bargaining power between the party's of the contract, and the aggrieved party's, level of awareness and comprehension of the terms and conditions of the contract. Geldermann & Co. v. Lane Processing, Inc., supra, at 575-76; Williams v. Walker-Thomas Furniture Co., supra, at 449-50.
>
> * * *
>
> Applying these factors to the standardize Account Agreement in question, we find that the circumstances surrounding its negotiation and execution indicate that Complainant was fraudulently induced . . . to sign and enter into an Account Agreement with insufficient knowledge or awareness of the risks and obligations he was assume under its provisions." ¶21,775, at 27,137; (emphasis added).

The Zavish Tribunal found numerous facts in support of its holding that the agreement was unconscionable. Both the IPMC Account Agreement itself and the complainant's (a) level of sophistication, (b) knowledge of the agreement,

(c) reading of the agreement, and

(d) desires, determined:

> "[W]hether the Account Agreement itself was a bargain mutually agreed upon by the parties -- whether there was a true 'meeting of the minds.'" Id., at 27,136.

In Geldermann & Co., Inc. v. Lane Processing, Inc., 527 F.2d 571 (8th Cir. 1975), upon which the Zavish tribunal so heavily relied, the court found that the liquidation clause in question -- one not as strict as that in Monex's Agreement -- was not unconscionable. The Geldermann court's analysis also rejects a summary disposition of unconscionable issues:

> "In assessing whether a particular contract or provision is unconscionable, the courts should review the totality of the circumstances surrounding the negotiation and the execution of the contract. Two important considerations are whether there is a gross inequality of bargaining power between the parties to the contract and whether the aggrieved

party was made aware of and comprehended the provision in question." Geldermann, supra, 527 F.2d at 575.

The Geldermann court, like the Zavish tribunal, also carefully reviewed the facts before it in determining that the forced liquidation provision was not unconscionable. Id. at 576-577.

Zavish, Geldermann, and other decisions stand for the proposition that an unconscionability claim is singularly inappropriate for summary disposition. 7/

III. ROSE'S OWN ADMISSION AND LEVEL OF SOPHISTICATION AS AN ATTORNEY REQUIRE THE DENIAL OF HIS MOTION

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7 E.g., Williams v. Walker-Thomas Furniture Corp., 350 F.2d 445, 450 (D.C. Cir. 1965) relied upon in Zavish, supra; A&M Produce Co. v. FMC Corp., 135 Cal App.3d 473, 186 Ca. Rptr. 114, 123 (1982) (numerous factual inquiries bear on the legal question of unconscionability).

The Account Agreement provides that California law governs this dispute. (Agreement, ¶7). Under California Civil Code Section 1670.5, the determination of whether a contract is unconscionable involves a factual determination similar to that made by the Geldermann court, concerning the commercial setting, purpose and effect of the challenged contract clause. The sophistication of the plaintiff is an integral part of that analysis. Chretian v. Donald L. Bren Co., 151 Cal. App.3d 385, 198 Cal. Rptr. 523, 525 (1984). 8/

And the Geldermann court cautioned that the unconscionability doctrine should not be used to:

8/This Tribunal may take judicial notice that California is among the most

(Footnote Continued)

> "[S]crutinize all contracts with a paternalistic attitude and summarily conclude that they are partially or totally unenforceable merely because an aggrieved party believes that the contract has subsequently proved to be . . . less beneficial than anticipated." Geldermann, supra, 527 F.2d at 576.

Rather, the unconscionability doctrine as developed by both California courts 9/ and elsewhere (e.g., Geldermann) merely protects against extreme contractual oppression and unfair surprise. Specifically, these courts search for unconscionability both in light of the commercial setting, purpose and effect of the challenged contract provision, and the reasonable

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(Footnote Continued)
pro-consumer jurisdictions in this country.

[9] Legislative Committee Comment, Cal. Civ. Code §1670.5 (West 1979).

expectations and relative bargaining strength of the parties at the time of contract formation. Cal. Civ. Code §1670.5(b).10/ California courts enforce contracts unless the trier of fact has found contract both "procedurally" and "substantively" unconscionable. Chretian v. Donald L. Bren Co., 151 Cal. App.3d 385, 198 Cal. Rptr. 523, 525 (1984); A&M Produce Company v. FMC Corporation, supra, 135 Cal. App.3d at 47, 86 Cal. Rptr. 122 (1982). Neither aspect of unconscionability is present here.

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[10]Cal. Civ. Code §1670.5 codified the judicially developed unconscionability doctrine. The section is identical to Uniform Commercial Code §2-302 which a majority of states have adopted. IMO Development Corp. v. Dow Corning Corp., 135 Cal. App.3d 451, 459, 185 Cal. Rptr. 341, 346 (1982); Graham v. Scissor-Tail, Inc., 28 Cal.3d 807, 171 Cal. Rptr. 604, 612, n.19 (1981).

(Footnote Continued)

A. MICHAEL ROSE IS A SOPHISTICATED LAWYER AND WAS NOT A VICTIM OF PROCEDURAL UNCONSCIONABILITY

Generally, courts will not give refuge to sophisticated individuals like attorney Michael Rose under the rubric of "procedural unconscionability",11/ even if the challenged provisions were not specifically negotiated:

(Footnote Continued)

11/Procedural unconscionability requires: (1) "oppression" -- i.e., unequal bargaining power in the absence of meaningful choice; or (2) "surprise" -- i.e., hiding the challenged terms in a "prolix printed form," which defies understanding. A&M Produce Co. v. FMC Corp., supra, 135 Cal. App.3d at 47, 86 Cal. Rptr. 122. As discussed above, Rose's sterling academic legal qualifications precludes him from either of these requirements.

> "Generally, '. . . courts have not been solicitious of businessmen in the name of unconscionability' (citations omitted). This probably because courts view businessmen as possessed of a greater degree of commercial understanding and substantially more economic muscle than the ordinary consumer. Hence, a businessman usually has a more difficult time establishing procedural unconscionability in the sense of either 'unfair surprise' or 'unequal bargaining power.'" A&M Produce Co., supra, 135 Cal. App.2d at 490, 186 Cal. Rptr. at 124.

Accord, Geldermann & Co. v. Lane Processing, Inc., supra, 527 F.2d 575.

Michael Rose is by his own admission, an extremely well educated and credentialed attorney, whom the United States Supreme Court noted, in a case brought by Rose, was a member of the New York

University Law Review.12/ Moreover, Rose admitted that not only did he read the Commodity Account Agreement and other material sent by Monex, he objected to the language of the Account Agreement, attempted to negotiated it, and, did not initially want to sign it. (Michael T. Rose Reparation Complaint, ¶¶18, 19). He finally agreed to sign the Commodity Account Agreement as written, and continued after he signed the Agreement to participate in more than 20 transactions, and to meet margin calls.

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12 Department of Air Force v. Rose, 452 U.S. 352, 355 n.1, 96 S.Ct. 1592, 1596, n.1 (1976). Unfortunately, Chief Justice Burger also noted that Rose had been found to be dishonest by at least one State Board of Bar Examiners. See In re Admission of Rose, 50 U.S.L.W. 3714 (March 8, 1982), and footnote 2, supra.

Rose's admissions themselves are enough to distinguish Rose from the complainant in Zavish. These admissions also remove from Rose his unconscionability refuge and make frivolous this motion for partial summary judgment. In a strikingly analogous reparations proceeding, this Tribunal held that an attorney who had never traded any form of commodity or stock had nonetheless ratified unauthorized and unlawful trades. Watters v. Thomson McKinnon Securities, Inc., Commodity Futures Law Reports (CCH) ¶21,240 (ALJ Painter 1981). This Tribunal repeatedly stressed that the Watters attorney-complainant had the necessary degree of education and intelligence to act with knowledge and to ratify the unauthorized trades. This Tribunal noted:

> "Even after being made aware of the unauthorized trades, Watters entered additional orders

> through his account executive . . . Bearing in mind that Watters, though a novice at futures trading, is a law school graduate, the inescapable conclusion is that Watters ratified any past trades entered by Chan [the broker]." Watters, supra, ¶21,240 at 25,199.

This Tribunal's Watters analysis and approach is even more applicable here where Michael Rose, an attorney with a distinguished academic background, asserts the unconscionability of an account agreement which he read, negotiated, and pursuant to which he continued to do business.

B. ROSE HAS NOT BEGUN TO ALLEGE, LET ALONG DEMONSTRATE THAT MONEX'S ACCOUNT AGREEMENT WAS "ONE SIDED" OR "INTRINSICALLY UNFAIR"

Rose has not pointed to one phrase in the Monex Commodity Account Agreement which suggests that the Agreement suffered

from some "substantive unconscionability". Cal. Civ. Code, §1670.5; Geldermann, supra, 527 F.2d at 575; A&M Produce Co., supra, 135 Cal. App.3d 487, 186 Cal. Rptr. 122, Zavish, supra, at 27137. Courts view as substantive suspect those contractual terms which "reallocate the risks of the bargain in an objectively unreasonable or unexpected manner," without justification. Id.

At this point, Respondents cannot possibly respond to Rose's assertion that the Commodity Account Agreement suffers from unconscionability, since Rose has not pointed out any similarities between Monex's Agreement and the agreement in Zavish.

A quick comparison of the two agreements, however, reveals the following terms and conditions, which were found to be present in the Zavish agreement, are

not contained in the Monex Commodity Account Agreement: the right to extend indefinitely the time for the leverage dealers' performance; the right to change the terms and conditions without notification to the customer; the disclaimer of authenticity of metals delivered by the dealers; and the right to liquidate open positions without notice in the dealers' sole discretion and without regard to the equity level on the customer's account.

IV. ROSE HAS NOT ALLEGED, LET ALONE DEMONSTRATED, HOW THE CLAIMED UNCONSCIONABILITY CAUSED HIM ANY OF HIS ASSERTED DAMAGES

Michael Rose has not even bothered to assert, much less demonstrate as a matter of law, that the Agreement's asserted unconscionability caused Michael Rose any damages or injury. Just as this Tribunal in Watters implicitly found that the

attorney's legal knowledge intervened in and broke the chain of causation, Michael Rose's legal analysis and attempted negotiation intervened and broke any possible chain of causation between the assert unconscionability and his losses. See, e.g., Stiller v. Shearson, Loeb Rhoades, Inc., Commodity Futures Law Reports (CCH) ¶21,780 at 27,155 (CFTC 1983) relying on Arrington v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 651 F.2d 615, 621 (9th Cir. 1981), where the Ninth Circuit limited plaintiff's damages at the point plaintiff knew of the alleged fraudulent activities.

CONCLUSION

For all the above reasons, as summarized in the Introduction (pp. 1-4), Michael Rose's motion should be denied.

Dated: May 13, 1985.

Respectfully submitted,

FARELLA, BRAUN & MARTEL

By Neil A. Goteiner

/s/Neil A. Goteiner

On behalf of all

Respondents

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Attorneys for Respondents
MONEX INTERNATIONAL, LTD.,
WILLIAM A. NOLLES, JR.,
and DEAN C. MOLL

UNITED STATES OF AMERICA
BEFORE THE COMMODITY FUTURES TRADING COMMISSION

MICHAEL T. ROSE,	)	CFTC DOCKET NO.
	)	84-R512
Complainant,	)	
	)	AFFIDAVIT OF
vs.	)	NEIL A. GOTEINER
	)	IN OPPOSITION TO

MONEX INTERNATIONAL, LTD., WILLIAM A. NELLES, JR., and DEAN C. MOLL,	)	MICHAEL T. ROSE'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE UNCONSCIONABILITY ISSUE
Respondents.	)	

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)

I, NEIL A. GOTEINER, depose and say:

1. I am an attorney licensed to ractice in the State of California and am a member of Farella, Braun & Martel in San Francisco. I submit this Affidavit in opposition to Michael T. Rose's Motion for Partial Summary Judgment on the unconscionability issue.

2. On May 10, 1985 Michael T. Rose, confirmed that he is an attorney and that

he is the same Michael T. Rose identified on Department of Air Force v. Rose, 452 U.S. 352 S.Ct. 1952 (1976), and In re Admission of Rose, 50 U.S.L.W. 3714 (March 8, 1982) cited to in the accompanying memorandum.

I declare upon penalty of perjury that the foregoing is true and correct and that I could so competently testify if called upon to do so.

Dated: May 13, 1985.

/s/ Neil A. Goteiner

Neil A. Goteiner

Subscribed and sworn
to before me this 13th
day of May, 1985.

/s/ Lidwin F. Serpanchy

Notary Public

DECLARATION OF SERVICE BY MAIL

I, Betty Davalos, declare:

I am a citizen of the United States and a resident of San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is Thirtieth Floor, Russ Building, 235 Montgomery Street, San Francisco, California.

On the date set forth below, I served the attached document** by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid in the United States post office mail box at San Francisco, California, addressed in the manner set forth below.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 13th day of May, 1985, at San Francisco, California.

/s/ Betty Davalos

Betty Davalos

**RESPONDENTS' MEMORANDUM IN OPPOSITION TO MICHAEL T. ROSE'S MOTION FOR "PARTIAL SUMMARY JUDGMENT"; AFFIDAVIT OF NEIL A. GOTEINER

Michael T. Rose, Esq.

Suite 19, Box 25

908 Bacons Bridge Road

Summerville, S.C. 29483

APPENDIX W

IN THE SUPREME COURT

OF THE STATE OF COLORADO

IN RE THE APPLICATION OF)
MICHAEL T. ROSE)
FOR ADMISSION TO THE BAR)
OF THE STATE OF COLORADO)

MOTION TO WITHDRAW RULES

AND ORDERS OF CONFIDENTIALITY

COMES NOW Michael T. Rose, a member and formerly an applicant to the Bar of the State of Colorado, and submits the following as a Motion to Withdraw Rules and Orders of Confidentiality:

1. On January 6, 1977, Michael T. Rose (hereinafter "Petitioner") was denied admission to the Bar of the State of Colorado.

2. On May 22, 1981, Petitioner was admitted to the Bar of the State of Colorado.

3. Upon information and belief, Petitioner is required by one or more Orders or Rules issued by or by the authority of the Supreme Court of Colorado to hold in confidence information pertaining to Petitioner's application, denial and admission to the Bar of the State of Colorado.

4. In a dissenting opinion dated March 8, 1982, Chief Justice Warren Burger of the United States Supreme Court published false and/or defamatory statements about Petitioner based upon information furnished to the United States Supreme Court by the Colorado Supreme Court which Petitioner believed would remain confidential.

5. Since the publication of the statements about Petitioner referenced above, said statements and articles about said statements have appeared in several news media and other publications, and the Petitioner has been asked about said statements by the news media and by numerous other persons.

6. The publication of the statements about Petitioner referenced above and of newspaper and other articles pertaining thereto have severely and irreparably damages Petitioner's personal and professional reputation.

7. On November 5, 1982, is scheduled a public hearing regarding proposed rules governing admission to the Bar of the State of Colorado.

8. Petitioner believes that the circumstances of Petitioner's application, denial and admission to the Bar of the

State of Colorado would provide information valuable to evaluating the proposed rules referenced above.

9. Petitioner desires that he and his attorneys be permitted to discuss Petitioner's application, denial of admission and admission to the Bar of the State of Colorado at the public hearing on November 5, 1982, and with any other news media source, attorney or other person, at any time.

WHEREFORE Petitioner requests that this Court immediately withdraw, rescind or release Petitioner from all Orders or Rules prohibiting Petitioner and Petitioner's attorneys or representatives, past, present and future, from discussing and otherwise communicating regarding the circumstances of Petitioner's application,

denial of admission and admission to the Bar of the State of Colorado.

Respectfully Submitted,

/s/ Michael T. Rose

Petitioner

October 18, 1982

APPENDIX X

DISTRICT OF _____)

) ss.

STATE OF COLORADO)

AFFIDAVIT

ROBERT C. MOORE, being first duly sworn, deposes and states as follows:

1. I am Assistant City Editor of the Colorado Springs Sun. My business address is Colorado Springs Sun, Cascade at Colorado, P. O. Box 130, Colorado Springs, Colorado 80901.

2. For nearly a year, I have been working on a series of newspaper articles concerning discipline problems at the United States Air Force Academy. In the course of my research, I reported on several statements made in a letter from

Michael T. Rose to Congressman Les Aspin, Chairman of the Armed Services Committee of the U.S. House of Representatives, concerning discipline at the Air Force Academy. As is standard procedure, I contacted officials at the Academy for a response to Mr. Rose's statements. They did not refute Mr. Rose's allegations, but suggested I research Mr. Rose's background more carefully.

3. Two specific examples of this come to mind. At a press conference on March 16, 1985, I questioned Senator Barry Goldwater, the Chairman of the Senate Arms Services Committee and a member of the Air Force Academy Board of Visitors, about Mr. Rose's statement that as many as 800 Academy cadets had turned themselves in for Honor Code violations during an amnesty period after a major cheating scandal in 1984.

4. Senator Goldwater initially did not respond to the question. Instead, he suggested I research Mr. Rose's background. Senator Goldwater characterized Mr. Rose as "a violator, to some extent, of the honor code; a man who went to law school and who was not admitted to the Colorado Bar on his initial try; who was denied the right to wear the Judge Advocate's insignia; [and] who has been practicing law in South Carolina."

5. The second incident occurred April 11, 1985. I interviewed Lieutenant Colonel Scott Duncan, the Air Force Academy Director of Public Affairs, concerning an official Air Force response to some of Mr. Rose's statements that had been requested by several members of Congress. During the course of the interview, Lieutenant Colonel Duncan handed me a copy of an article on Mr. Rose

that appeared in the Colorado Springs Sun on March 9, 1982. The article dealt with the United States Supreme Court's decision to admit Mr. Rose to the Supreme Court Bar. Lieutenant Colonel Duncan specifically drew my attention to several quotes from Chief Justice Warren Burger's dissent about what had happened to Mr. Rose regarding his application for admission to the Colorado Bar.

Further the affiant sayeth not.

/s/Robert C. Moore

Robert C. Moore

Subscribed and sworn to before me this 10th day of June, 1985, by Robert C. Moore.

My commission expires 10/15/88.

Witness my hand and official seal.

[SEAL] /s/Susan B. Hiddis

NOTARY PUBLIC

APPENDIX Y

U.S. CONST. amend V

AMENDMENT V [1791]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life and limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX Z

U.S. CONST. amend, § 1

AMENDMENT XIV [1868]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX AA

28 U.S.C. § 1257(3) (1970)

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.

APPENDIX BB

RULES GOVERNING ADMISSION TO THE BAR

Adopted by the Colorado Supreme Court November 10, 1982, effective December 1, 1982.

NOTE: Existing Rules 201 through 220 and Rules 222 through 225 were repealed and were reenacted as Rule 201 by the Supreme Court November 10, 1982, effective December 1, 1982.

RULE 201

Rule 201.1. Supreme Court Jurisdiction

The Supreme Court exercises jurisdiction over all matters involving the licensing of persons to practice law in the State of Colorado. Accordingly, the Supreme Court has adopted the following rules governing admission to the practice of law.

Rule 201.2. Board of Law Examiners

(1) The "Colorado State Board of Law Examiners" (Board) shall consist of two committees, "the Law Committee" and "the Bar Committee."

(a) The Law Committee shall consist of eleven members of the Bar appointed by the Supreme Court for terms of five years. They serve at the pleasure of and may be dismissed at any time by the Supreme Court. A member of the Law Committee may resign at any time. The Supreme Court shall designate one of the members of the Law Committee to serve as its chair and also chair of the Board. The Law Committee shall conduct two written examinations each year, one in February and one in July, in the metropolitan Denver, Colorado area or at such other times and places as may be designated by the Court. The Supreme Court shall review and approve in advance the general standards of

performance that must be met in order to pass the written examination.

(b) The Bar Committee shall consist of nine members of the Bar appointed by the Supreme Court for terms of five years. They serve at the pleasure of and may be dismissed at any time by the Supreme Court. A member of the Bar Committee may resign at any time. The Supreme Court shall designate one of the members of the Bar Committee to serve as its chair. It shall be the duty of the Bar Committee to investigate applicants' mental stability, education, professional experience, and ethical and moral qualifications for admission to the Bar.

(2) The Board shall employ an executive director, subject to the approval of the Supreme Court, and such other staff as may be necessary to assist in performing its functions. The Board shall pay all

expenses reasonably and necessarily incurred by it under an annual budget recommended by the Board and approved by the Supreme Court.

(3) The Board shall recommend to the Supreme Court proposed changes or additions to the rules of procedure governing admission to the practice of law. The Board may adopt guidelines to govern its internal operation and to provide guidance to the executive director.

(4) All fees required by Rule 201.4(3) shall be paid by the executive director into a fund kept in a depository designated by the Supreme Court and used to pay expenses incurred incident to the admission of attorneys. A portion of the fund, while held for future expenses, may be invested as the Supreme Court shall direct. The fund shall be audited annually.

(5) Persons performing official duties under the pr isions of this rule, including members of the Law Committee, members of the Bar Committee, the executive director and staff, and members of the Bar working under the direction of the Board, shall be immune from personal liability for all conduct in the course of their official duties. All information provided to the Bar Committee concerning the mental stability or ethical or moral qualifications of an applicant shall be absolutely privileged and no lawsuit may be predicated thereon.

Rule 201.3. Classification of Applicants

(1) Class A applicants are those who, as determined by the Bar Committee, have been admitted to the Bar of another state, territory, or district of the United States and who have (a) been actively and substantially engaged in the practice

of law for five of the seven years immediately preceding application for admission to the Bar of Colorado, or (b) attained a scaled score of at least 152 on the Multi-State Bar Examination at an examination taken within the two years next preceding application for admission to the Bar of Colorado. (Amended and effective June 21, 1984.)

(2) For purposes of this rule, "practice of law" means:

(a) The private practice of law as a sole practitioner or as a lawyer employee of or partner or shareholder in a law firm, professional corporation, legal clinic, legal services office, or similar entity; or

(b) Employment as a lawyer for a corporation, partnership, trust, individual, or other entity with the primary duties of:

(i) Furnishing legal counsel, drafting documents and pleadings, and interpreting and giving advice with respect to the law, and/or

(ii) Preparing, trying or presenting cases before courts, executive departments, administrative bureaus or agencies; or

(c) Employment as a lawyer in the law offices of the executive, legislative, or judicial departments of the United States, including the independent agencies thereof, or of any state, political subdivision of a state, territory, special district, or municipality of the United States, with the primary duties of

(i) Furnishing legal counsel, drafting documents and pleadings, and interpreting and giving advice with respect to the law, and/or

(ii) Preparing, trying or presenting cases before courts, executive departments, administrative bureaus of agencies; or

(d) Employment as a judge, magistrate, hearing examiner, administrative law judge, law clerk, or similar official of the United States, including the independent agencies thereof, or of any state, territory or municipality of the United States with the duties of hearing and deciding cases and controversies in judicial or administrative proceedings, provided such employment is available only to a lawyer; or

(e) Employment as a teacher of law at a law school approved by the American Bar Association throughout the applicant's employment; or

(f) Any combination of subparagraphs (a) - (e) above.

(3) A full-time commissioned officer and judge advocate of the military services of the United States stationed in this state may be temporarily admitted to the Bar of Colorado, upon request of his or her commanding officer. Such admission shall be solely for the purpose of court appearance in his or her capacity as a judge advocate and shall continue only as long as he or she is serving as a judge advocate in Colorado.

(4) All other applicants are Class B applicants, who shall take a written examination.

Rule 201.4. Applications

(1) All applications shall be made on forms furnished by the Board, requiring such information as is necessary to determine whether the applicant meets the requirements of these rules, together with such additional information as is

necessary for the efficient administration of these rules.

(2) All Class B applications shall be received or postmarked on or before the first day of December preceding the February Bar Examination or on or before the first day of May preceding the July Bar Examination or at such other times as may be designated by the Court.

(3) Fees shall be required of all applicants in an amount fixed by the Court and shall be paid by cash, bank cashier's check or money order. Fees may be refunded in accordance with guidelines adopted by the Board. An application which is not accompanied by the applicable fee will not be accepted.

Rule 201.5. Educational Qualifications

(1) Every Class A applicant shall have obtained the same educational requirements as were required to be obtained

by persons who sought admission by examination in Colorado on the date the applicant was first admitted to the practice of law.

(2) Class B applicants shall meet the following educational requirements:

(a) Every Class B applicant shall have received at the time of the examination (i) a professional degree from a law school approved by the American Bar Association pursuant to Sections 301, 302, 303, 304, 305, 306 and 308 of the Standards for Approval of Law Schools Approved by the House of Delegates of the American Bar Association, which Standards are incorporated herein by reference (see appendix to Rule 201 (page 140) for text of the Standards); or (ii) a law degree from a state accredited law school, provided that such applicant shall have been admitted to the bar of another state, territory, or

district of the United States and shall have been actively and substantially engaged in the practice of law, as defined by Rule 201.3(2), for five of the seven years immediately preceding application for admission to the Bar of Colorado.

(b) A Class B applicant who does not meet the requirements of subsection (2)(a)(i) but who has received a professional degree from a law school in a common law, English-speaking nation other than the United States may petition the Bar Committee to consider whether the applicant's legal training was substantially equivalent to that required by subsection (2)(a)(i). The burden of demonstrating substantial equivalence shall be on the applicant, and the Bar Committee shall apply the Standards for Approval of Law Schools (see appendix, page 140) in determining whether the applicant's legal

education is sufficient to qualify the applicant for admission.

(Amended and effective June 21, 1984.)

Rule 201.6. Moral and Ethical Qualifications

(1) Applicants must demonstrate that they are mentally stable and morally and ethically qualified for admission. Fingerprints may be required of all applicants.

(2) Evidence of the mental stability and moral and ethical qualifications of Class A applicants shall include three affidavits attesting to the applicant's mental stability and moral and ethical qualifications, at least one of which shall be by a member of the Bar in good standing in the community where the applicant last practiced.

(3) Evidence of the mental stability and moral and ethical qualifications of Class B applicants shall include three affidavits attesting to the applicant's mental stability and moral and ethical qualifications, one of which shall be by a member of a faculty of a law school attended by the applicant.

(4) The Bar Committee may require further evidence of an applicant's mental stability and moral and ethical qualifications reasonably related to the standards for admission as it deems appropriate, including a current mental status examination. Costs for any mental status examination or for obtaining any additional information required by the Bar Committee shall be borne by the applicant.

Rule 201.7. Review of Applications

The executive director, pursuant to guidelines developed by the Bar Committee,

shall review all applications for information about the mental stability and ethical or moral qualifications of each applicant. The executive director shall certify to the Bar Committee the names of those applicants who, without further investigation, appear to be qualified for admission. After review and approval by the Bar Committee, the executive director shall certify to the Supreme Court the names of all qualified applicants. Those applicants not certified shall be referred for review by an inquiry panel of the Bar Committee.

Rule 201.8. Inquiry and Hearing Panels of the Bar Committee

The chair of the Bar Committee shall assign at least three members of the Bar Committee to one or more inquiry panels and at least three members of the Bar Committee to one or more hearing panels.

Members of the Bar Committee may be assigned by the chair from one panel to another, but in no event shall a member who has conducted a preliminary screening or inquiry of an applicant take any part in the consideration of a formal hearing involving the same applicant. In the discharge of its duties, the Bar Committee may enlist the assistance of other persons admitted to practice law in Colorado. A quorum of either a hearing panel or an inquiry panel is three persons.

Rule 201.9. Review by Inquiry Panel

(1) If, after investigation conducted pursuant to guidelines developed by the Bar Committee, the executive director recommends that an inquiry panel be convened to determine whether there is probable cause to believe that an applicant is not mentally stable or ethically or morally qualified, the chair of the Bar

Committee shall designate a member of the Bar Committee to review the director's recommendation. If the reviewing member concurs with the executive director's recommendation, the chair of the Bar Committee shall convene an inquiry panel which includes the reviewing member and designate one of the inquiry panel members as chair.

(2) The director shall notify the applicant in writing of the general matters in question and invite the applicant to appear for an interview with the inquiry panel. The applicant may be accompanied by counsel, and the notice shall so advise. The notice shall be sent by certified mail, at least fifteen days before the interview is scheduled, to the address listed on the application or the address subsequently provided in writing to the Board by the applicant.

(3) If not satisfactorily explained, an applicant's failure to appear for an interview may be grounds to recommend denial of the application.

(4) Probable cause for denial exists under the following circumstances:

(a) The applicant has been convicted of a felony or a crime of moral turpitude, or any crime involving a breach of fiduciary duty, or accepted a deferred judgment which is pending as to such a charge in any jurisdiction;

(b) The applicant has been publicly disciplined in any jurisdiction for a violation of a code of professional responsibility or a comparable code of ethics;

(c) The applicant has been declared mentally ill or incompetent by a court having jurisdiction and the declaration has not been dissolved or rescinded;

(d) The applicant has been found not guilty of any crime by reason of insanity.

(5) In addition, probable cause for denial of an application may be established by any evidence which, in the judgment of the majority of the inquiry panel members, tends to show that the applicant is not mentally stable or morally or ethically fit to practice law. In making its probable cause determination, the inquiry panel is not bound by formal rules of evidence and may consider all documents, statements or other matters brought to its attention.

(6) If the inquiry panel determines that there is probable cause to believe that the applicant is unqualified,

(a) The panel shall set forth its findings in writing within fifteen days after the panel meeting at which such determination is made;

(b) The findings shall state with particularity the specific matters indicating that the applicant is not qualified; and

(c) The executive director shall send a copy of the inquiry panel's findings to the applicant with a notice that these findings shall become the Bar Committee's recommendation to be filed with the Supreme Court, unless within thirty days after the notice is mailed, the applicant files with the Board a written request for a hearing. The request shall include the applicant's response to each of the specific matters in the inquiry panel findings.

(7) If the reviewing member ascertains that an inquiry panel proceeding is not justified or the inquiry panel determines that there is not probable cause to believe that the applicant is unqualified,

the executive director shall certify to the Supreme Court that the Bar Committee recommends the applicant's admission.

Rule 201.10. Formal Hearings

(1) If, under Rule 201.9, an inquiry panel finds probable cause to believe that an applicant is mentally unstable or ethically or morally unfit for admission to the Bar, a formal hearing shall be conducted by a hearing panel if the applicant makes a written request as specified in Rule 201.9(6)(c). The issues at the formal hearing shall be limited to those in the inquiry panel findings and challenged in the applicant's request for a hearing unless, prior to the hearing, the disciplinary prosecutor requests the inquiry panel to reopen the probable cause determination to consider additional information. The chair of the Bar Committee shall designate one member of the hearing

panel as its chair who shall rule on all motions, objections and other matters presented in connection with a formal hearing.

(2) If the applicant files a written request for a formal hearing, the hearing shall be conducted under the following rules of procedure.

(a) The executive director shall notify the applicant in writing of:

(i) The date, time and place of the hearing;

(ii) The names and addresses of persons on whom the inquiry panel relied to establish adverse matters concerning the applicant's fitness; and

(iii) The right of the applicant to be represented by counsel at such hearing, to examine and to cross-examine witnesses, to adduce evidence bearing upon the applicant's moral character and general fitness

to practice law, and to make reasonable use of the subpoena powers of the Bar Committee.

(b) (i) The chair of the Bar Committee or the chair of the hearing panel may issue subpoenas to compel the attendance of witnesses and the production of pertinent books, papers, documents, or other evidence. Witnesses shall be entitled to receive fees for mileage as provided by law for witnesses in civil actions.

(ii) A subpoena shall indicate that it is issued in connection with a confidential proceeding and that it may be deemed contempt of the the [sic] Supreme Court to breach the confidentiality of the proceeding in any way. It shall not be deemed a breach of confidentiality for a person subpoenaed to consult with a lawyer.

(iii) Any challenge to the power to subpoena as exercised under this rule shall be directed to the chair of the Bar Committee or the chair of the hearing panel.

(iv) Any person who fails or refuses to comply with a subpoena issued by the chair of the Bar Committee or the chair of the hearing panel may be cited for contempt of the Supreme Court upon recommendation of the chair of the Bar Committee.

(v) Depositions may be taken by any party to a proceeding conducted under this rule and used in the same manner and to the same extent as in any civil action except all depositions shall be sealed and filed with the Supreme Court unless otherwise ordered. Subpoenas for attendance at depositions may be issued by the chair of the Bar Committee or the chair of the hearing panel on behalf of any party.

(c) A hearing before a hearing panel shall be confidential unless the applicant shall request that the hearing be public. An applicant may not be required to testify or produce records over his objection if to do so would be in violation of his constitutional privilege against self-incrimination. The hearing panel shall not be bound by the formal rules of evidence. The hearing panel in its discretion may take evidence other than in testimonial form, having the right to rely upon records and other material furnished to it in response to its request for assistance in its inquiries or in response to its subpoena powers. The hearing panel in its discretion may determine whether evidence to be taken in testimonial form shall be taken in person or upon deposition, but in either event all testimonial evidence shall be taken under oath. A

complete stenographic record of the hearing shall be kept, and a transcript thereof may be ordered by the applicant at the applicant's expense.

(d) Within thirty days after the conclusion of the hearing, the hearing panel shall prepare and file with the Supreme Court its report including findings of fact, conclusions of law and recommendations as to admission. Copies of the hearing panel's report shall be supplied to the disciplinary prosecutor and the applicant. Within fifteen days after service of the hearing panel's report, both the applicant and the disciplinary prosecutor shall have the right to file with the Supreme Court and serve on the opposing party written exceptions to the report.

(e) The Supreme Court, after reviewing the report of the hearing panel and

any exceptions filed thereto, may admit or decline to admit the applicant to the Bar. The Supreme Court reserves the authority to review any determination made in the course of an admission proceeding and to enter any order with respect thereto, including an order that the Bar Committee conduct further proceedings.

(3) The burden of proof shall be on the applicant to show by a preponderance of the evidence that the applicant is mentally stable and ethically and morally fit for admission to the Bar.

(4) At the formal hearing, the office of the disciplinary prosecutor shall represent the inquiry panel and shall present evidence in support of the inquiry panel's findings. The hearing panel shall take evidence and make findings of fact and conclusions of law. With the permission of the chair of the panel and upon

sufficient notice to the applicant, the disciplinary prosecutor may file amendments made by the inquiry panel to its findings. The burden of going forward initially shall be on the disciplinary prosecutor. On motion of the disciplinary prosecutor, and upon a showing of good cause, the hearing panel may require the applicant to submit to a mental status examination conducted by a psychiatrist, the cost of which shall be borne by the applicant.

(5) A prima facie case of unfitness shall be deemed established, and the burden of going forward shall shift to the applicant, upon a showing of any of the following facts:

(a) The applicant has been convicted of a felony or a crime of moral turpitude, or any crime involving a breach of fiduciary duty, or accepted a deferred judgment

which is pending as to such a charge in any jurisdiction.

(b) The applicant has been publicly disciplined in any jurisdiction for a violation of a code of professional responsibility or a comparable code of ethics.

(c) The applicant has participated personally, as an attorney or a party, in manifestly excessive and frivolous litigation or has been convicted of contempt of court.

(d) The applicant has been declared mentally ill or incompetent by a court having jurisdiction, and the declaration has not been dissolved or rescinded.

(e) The applicant has been found not guilty of any crime by reason of insanity.

(6) None of the facts sufficient to establish a prima facie case of unfitness, as set forth in subsection (5), shall

constitute an absolute prohibition to admission, and a prima facie showing of unfitness on any ground whether or not specified in subsection (5), may be rebutted by sufficient proof, by a preponderance of the evidence, that the applicant is mentally stable and ethically and morally fit for admission.

Rule 201.11. Request for Disclosure of Confidential Information

(1) Except as otherwise authorized by order of the Supreme Court, the Bar Committee shall deny requests for confidential information unless the request is made by:

(a) An agency authorized to investigate the qualifications of persons for admission to practice law;

(b) An agency authorized to investigate the qualifications of persons for government employment;

(c) A lawyer discipline enforcement agency; or

(d) An agency authorized to investigate the qualifications of judicial candidates.

If the request is granted, information shall be released only upon certification by the requesting agency that the confidential information shall be used for authorized purposes only.

(2) If one of the above enumerated agencies requests confidential information, the Bar Committee shall give written notice to the applicant that the confidential information will be disclosed within ten days unless the applicant obtains an order from the Supreme Court restraining such disclosure.

Rule 201.12. Reapplication for Admission

(1) An applicant who has been rejected by the Supreme Court as mentally

unstable or ethically or morally unfit may reapply for admission five years after the date of the Supreme Court's rule unless otherwise ordered by the Supreme Court. Upon reapplication, the applicant shall have the burden of showing to the Bar Committee by a preponderance of the evidence the applicant's fitness to practice as prescribed by these rules. Upon reapplication, the applicant also shall complete successfully the written examination for admission to practice even though the applicant has previously passed such an examination in Colorado.

(2) An applicant for readmission to the Bar after disbarment shall satisfy all requirements of Rule 241.22 and meet all the standards for admission prescribed for Class B applicants under this rule. Additionally, a disbarred applicant shall be required to submit to a hearing, as

prescribed in Rule 201.10, before a hearing panel of the Bar Committee. At the hearing, the disbarred applicant shall demonstrate by clear and convincing evidence that the applicant is rehabilitated, that the applicant has complied with all court orders and rules associated with the disbarment proceedings, and that the applicant is now a proper person to be readmitted to the Bar of Colorado fully considering and notwithstanding the previous disciplinary action taken against the applicant. The Supreme Court, after reviewing the findings of the hearing panel and any exceptions filed thereto, may readmit or decline to readmit the disbarred applicant.

Rule 201.13. Inspection of Essay Examination Answers

Subject to approval by the Supreme Court, the decision of the Law Committee

that an applicant has passed or failed the written Bar Examination shall be final. Beginning twenty days after the results from an examination are mailed and ending on the sixtieth day thereafter, any unsuccessful applicant shall be entitled to a reasonable inspection of the applicant's answers to the essay portion of the examination. This rule does not permit applicants to inspect the Multi-State Bar Examination.

Rule 201.14. Oath of Admission

(1) No applicant shall be admitted to the Bar of this State until such time as he or she has taken the oath of admission prescribed by the Supreme Court. No Class A applicant shall be permitted to take such oath later than eighteen months subsequent to the date upon which his or her application has been approved. No Class B applicant shall be permitted to

take such oath later than eighteen months subsequent to the date of the announcement by the Supreme Court that he or she has passed the examination. Nothing herein shall preclude reapplication for admission.

(2) Admission of all applicants shall be by order of the Supreme Court, en banc, and certificates of admission issued to applicants shall be signed by the Clerk of the Supreme Court. Every applicant, before receiving a certificate of admission, shall pay a license fee to be set by the Supreme Court and sign an oath before the Clerk of the Supreme Court or other designated officer. The portion of the license fee necessary to cover the cost of the license shall be remitted to the Clerk of the Supreme Court. (Amended and effective May 19, 1983.)

(Amended and effective March 18, 1985.)

APPENDIX CC

October 26, 1977

The Honorable Charles H. Wilson
Member of Congress
2409 Rayburn Building
Washington, D.C. 20515

Re: Michael Rose

Dear Congressman Wilson:

I deeply appreciate your letters of October 4, 1977 and October 11, 1977.

Mr. Rose passed our bar examination given in February 1976. The Bar Committee of the Colorado State Board of Law Examiners (which handles matters of ethics and morals) recommended to us that he not be admitted, and we followed the recommendation. During the hearings of the Bar Committee, Mr. Rose had two successive attorneys. After our refusal to admit him, he has appeared before us on two

occasions by two other attorneys, acting in succession. He still has not been admitted, although it is possible that in the future he may make some sort of formal request of us. We will cross this bridge when we get to it.

The foregoing information is more than we generally disclose without the permission of the applicant. However, you are entitled to have it, but I ask that you treat is as rather privileged.

The members of the court in general and Chief Justice Pringle and I in particular wish to thank you for your wonderful cooperation in this matter. If you care for me to do so, I will keep you on my mailing list re the future of Mr. Rose.

Sincerely,

JKG/sc James K. Groves

APPENDIX DD

U.S. CONST. amend I

AMENDMENT I [1791]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the Government for a redress of grievances.

Supreme Court, U.S.
FILED
FEB 28 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1188

In The
Supreme Court of the United States
October Term, 1985

MICHAEL THOMAS ROSE,
Petitioner,

vs.

THE SUPREME COURT OF THE STATE OF COLORADO,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

DUANE WOODARD
Attorney General

CHARLES B. HOWE
Deputy Attorney General

RICHARD H. FORMAN
Solicitor General

*BILLY SHUMAN
Deputy Attorney General

CHERYL J. HANSON
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Denver, Colorado 80203
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*Counsel of Record.

COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

QUESTIONS PRESENTED FOR REVIEW

1. Whether the petition for certiorari should be denied as jurisdictionally out of time.

2. Whether special and important reasons exist for the exercise of this court's discretion to grant a writ of certiorari in this case.

TABLE OF CONTENTS

	Pages
OPINIONS BELOW	1
JURISDICTION	2
APPLICABLE CONSTITUTIONAL PROVISIONS, STATUTES AND RULES	3
STATEMENT OF THE CASE	4
SUMMARY OF ARGUMENT	7
ARGUMENT:	
I. THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED AS JURISDICTIONALLY OUT OF TIME.	8
II. NO SPECIAL AND IMPORTANT REASONS EXIST FOR THE EXERCISE OF THIS COURT'S DISCRETION TO GRANT A WRIT OF CERTIORARI IN THIS CASE.	11
CONCLUSION	16

TABLE OF AUTHORITIES

Pages

CASES

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) 3, 10

District of Columbia v. Sweeney, 310 U.S. 631 (1940) 11

In re Admission of Rose, 50 U.S.L.W. 3714 (March 9, 1982) 5, 10, 14

In re the Application for Admission of Michael Thomas Rose (February 10, 1980) 1, 5

Lane & Bowler Corporation v. Western Well Works, Inc., 261 U.S. 387, 393 (1923) 11

Magnum Import Company v. Francois Joseph de Spoturno Coty, 262 U.S. 159, 163 (1923) 11

Rice v. Sioux City Cemetery, 349 U.S. 70, 74 (1955) 11

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Colo. R. Civ. P. 201.2(5) 15

Colo. R. Civ. P. 201.10(2) (c) 15

Colo. R. Civ. P. 216 ..... 3, 5, 13, 14, 15

Colo. R. Civ. P. 217 3

U.S. Sup. Ct. R. 17, 28 U.S.C. Appendix (1982) 3, 11

U.S. Sup. Ct. R. 20, 28 U.S.C. Appendix (1982) 3, 9

U.S. Sup. Ct. R. 21, 28 U.S.C. Appendix (1982) 3, 8

No. 85-1188

In The

Supreme Court of the United States

October Term, 1985

MICHAEL THOMAS ROSE,

Petitioner,

vs.

THE SUPREME COURT OF THE STATE OF COLORADO,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

OPINIONS BELOW

The 1976 report of the bar committee of the State Board of Law Examiners (the "bar committee"), recommending the denial of Rose's application for admission to the Colorado bar, appears in petitioner's appendix C at pp. 6a through 13a. The January 6, 1977 order of the Colorado Supreme Court denying Rose's application for admission to the Colorado bar appears in petitioner's appendix D at p. 14a. The minute order of the Colorado Supreme Court denying Rose's April 8, 1977 petition requesting the Colorado Supreme Court to reconsider its January 6, 1977 order was entered on or about April 21, 1977. *See* amended petition for admission, *In the Matter of the Application of Michael Thomas Rose*, respondent's

appendix E at pp. 27b through 29b. The January 21, 1980, special master's order appears in petitioner's appendix F at pp. 30a and 31a. The 1981 special master's report, which recommended Rose be admitted to the Colorado bar, appears in petitioner's appendix E at pp. 14a through 29a. The October 27, 1982, letter from David W. Brezina, Clerk of the Colorado Supreme Court, in response to Rose's motion to withdraw rules and orders of confidentiality, appears in petitioner's appendix B at pp. 3a through 5a. The order of the Colorado Supreme Court denying Rose's July 2, 1985 petition for relief appears in petitioner's appendix A at pp. 1a and 2a.

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JURISDICTION

Following the January 6, 1977 order of the Colorado Supreme Court denying Rose's first application for admission to the Colorado bar, Rose submitted a petition, based in part upon the due process clause of the fourteenth amendment to the United States Constitution, requesting the Colorado Supreme Court to amend the order and admit him or, in the alternative, to void the order and grant him a *de novo* hearing. Rose's April 1977, petition is reproduced as respondent's appendix A at pp. 1b through 5b. The petition for reconsideration was denied by the Colorado Supreme Court on April 21, 1977.

On October 18, 1982, Rose filed with the Colorado Supreme Court a motion to withdraw rules and orders of confidentiality. Petitioner's appendix W at pp. 235a through 239a. By letter dated October 27, 1982, the Colo

rado Supreme Court, through its clerk, granted the request to waive the rules and orders of confidentiality to the extent provided in such letter. Petitioner's appendix B at pp. 3a through 5a.

On July 2, 1985, Rose filed a petition for relief in the Colorado Supreme Court reasserting the factual allegations and legal arguments originally made in his April 8, 1977, petition, reasserting the factual basis for his October 18, 1982 request for relief from rules and orders of confidentiality, and raising arguments based upon the First Amendment to the United States Constitution relating to such rules and orders. Rose's July 1985, petition is reproduced as respondent's appendix B at pp. 6b through 22b. The Colorado Supreme Court denied the petition on October 17, 1985. The petition for writ of certiorari was filed with this court on January 15, 1986. Jurisdiction of this court is invoked pursuant to 28 U.S.C. sec. 1257(3) (1970) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

———o———

APPLICABLE CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

U.S. Sup. Ct. R. 17, 28 U.S.C., Appendix (1982)

U.S. Sup. Ct. R. 20, 28 U.S.C., Appendix (1982)

U.S. Sup. Ct. R. 21, 28 U.S.C., Appendix (1982)

Colo. R. Civ. P. 216, reproduced as appendix C, hereto, at pp. 23b and 24b.

Colo. R. Civ. P. 217, reproduced as appendix D, hereto, at pp. 25b and 26b.

STATEMENT OF THE CASE

Petitioner first applied for admission to the Colorado bar in 1975. After an investigation of his moral and ethical qualifications, including two hearings before the bar committee, the Colorado Supreme Court, on January 6, 1977, denied his application for admission. In April 1977, Rose filed a petition requesting the Colorado Supreme Court either to amend its January 6, 1977 order and admit him to the Colorado bar or to void such order and grant him a *de novo* hearing. In that petition, Rose first raised the federal due process issues which he now requests this court to review. Respondent's appendix A at pp. 1b through 5b. The petition was considered by the Colorado Supreme Court *en banc* and denied on April 21, 1977.

In December 1978, Rose reapplied for admission to the Colorado bar. In his amended petition for admission Rose reiterated his procedural due process arguments relating to the proceedings which resulted in the 1977 denial of his application. Respondent's appendix E at pp. 27b through 34b. Although Rose reasserted his due process arguments he admitted the validity of the initial findings of the bar committee and stated that he understood the impropriety of the actions upon which the denial of his initial application was based. *Id.*, para. 7, at p. 33b. *See also* petitioner's appendix E at pp. 16a, 20a and 21a.

The proceedings relating to Rose's reapplication involved extensive discovery, several prehearings and a final 3-day hearing before a special master on February 16, 17, and 18, 1981. On January 21, 1980, at Rose's request, the special master entered an order concluding that

the ongoing proceedings were confidential pursuant to the then applicable Colo. R. Civ. P. 216. Petitioner's appendix F at pp. 30a and 31a. Additionally, on February 10, 1980, Rose submitted a motion to dismiss portions of a special counsel's report bearing on the proceedings which led to the denial of his first application for admission. Applicant's motion to dismiss report of special counsel, *In re the Application for Admission of Michael Thomas Rose* (February 10, 1980), respondent's appendix F at pp. 35b through 39b. In that motion Rose argued that the findings and subsequent order of denial relating to his first application were *res judicata* and that "no useful purpose would be served" by relitigating such matters. *Id.* at 35b. On October 17, 1980, the special master ruled that the matters relating to the initial proceedings would not be relitigated. *See*, petitioner's appendix E at p. 16a.

At the conclusion of the reapplication proceedings the special master recommended that Rose be admitted to the Colorado bar. *Id.* at p. 29a. Rose was admitted on May 22, 1981.

In 1979 Rose applied to this court for admission to its bar. In response to a request from the clerk of this court, and with Rose's consent, the Colorado Supreme Court furnished this court with information from its files. Petitioner's appendices N, O, and P, at pp. 135a through 149a; letter from Rose to Justice Groves, March 16, 1979, respondent's appendix G at p. 40b. The application to this court was held in abeyance pending action on Rose's reapplication to the Colorado bar. Petitioner's appendix Q at pp. 150a and 151a. Rose was admitted to the bar of this court on March 9, 1982. *In re Admission of Rose*, 50

U.S.L.W. 3714 (March 9, 1982), petitioner's appendix S at pp. 161a through 166a.

On October 18, 1982, Rose filed with the Colorado Supreme Court a motion to withdraw rules and orders of confidentiality. Petitioner's appendix W at pp. 235a through 239a. In that motion Rose asserted that he had been harmed by "false and/or defamatory statements" made in the dissent to this court's order admitting him to its bar, and that such "false" and "defamatory" statements were based upon the confidential information furnished to this court by the Colorado Supreme Court. *Id.* at 236a. Rose requested permission to address a scheduled public rulemaking hearing concerning the circumstances surrounding his application, denial and subsequent admission to the Colorado bar and requested the court to release him from all orders and rules of confidentiality relating to his admission proceedings. *Id.* at 238a. The Colorado Supreme Court responded to the motion through its clerk in a letter dated October 27, 1982. Petitioner's appendix B at pp. 3a and 4a. The Colorado Supreme Court refused Rose's request to discuss the circumstances of his particular case at the rulemaking hearing but waived the rules and orders of confidentiality with respect to the information supplied to this court, noting that no other information relating to Rose had been released by it to anyone. *Id.*

On July 2, 1985, four years after his admission to the Colorado bar and eight years from the denial of his initial application Rose filed with the Colorado Supreme Court a petition for relief in which he raised for the third time the procedural due process issues relating to his first appli-

cation for admission, submitted for the second time the factual allegations purportedly supporting his request for relief from all orders and rules of confidentiality relating to has case and raising arguments based upon the first amendment to the United States Constitution. Respondent's appendix B at pp. 6b through 22b. In his July 1985 petition Rose requested the Colorado Supreme Court to (1) declare the bar committee's findings and recommendation on his initial application to be null and void *ab initio* for lack of due process; (2) declare the Colorado Supreme Court's order refusing to admit him to the Colorado bar to be void *ab initio* for lack of due process; (3) expunge the entire record concerning his initial application; and (4) release him from all rules and orders of confidentiality. The petition was denied by the Colorado Supreme Court *en banc* on October 17, 1985. Petitioner's appendix A at pp. 1a and 2a. Rose bases his petition for writ of certiorari in this action on the Colorado court's October 1985 order.

—o—

SUMMARY OF ARGUMENT

1. Although Rose asserts as his jurisdictional basis the October 1985 order of the Colorado Supreme Court, the orders which in fact form the basis for his claims were entered in 1977 and 1982. Rose failed to appeal such orders and, in an attempt to obtain an order from which a timely appeal could be taken, reasserted his claims in his 1985 petition. His petition for writ of certiorari should, therefore, be denied.

2. The relief sought by Rose in the petition for writ of certiorari is essentially a declaration which would vindicate him with respect to the fact that he was not admitted to the Colorado bar on his first application. In order for this court to grant such relief this court would be required to act as a factfinder with respect to stale and disputed facts. Rose has been admitted to the Colorado bar. The rules applicable to his admission proceedings have been repealed. There are, therefore, no special and important reasons for granting his petition for writ of certiorari.

———o———

ARGUMENT

I.

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED AS JURISDICTIONALLY OUT OF TIME.

Although Rose asserts as his jurisdictional basis the Colorado Supreme Court's order of October 17, 1985, denying his petition for relief filed on July 2, 1985, Rose first raised the issues set forth in such petition years earlier and failed to pursue his appellate remedies from the Colorado court's initial disposition of such issues. In order to show that the applicable federal questions were timely and properly raised so as to confer upon this court jurisdiction to review a state court judgment, U.S. Sup. Ct. R. 21, 28 U.S.C., Appendix (1982) requires that a petition for writ of certiorari include not only the date and time of entry of the relevant state court judgment but also (1) the stage in

the proceedings at which the federal questions sought to be reviewed were raised, (2) the method or manner of raising them and the way in which they were passed upon by the state court, and (3) pertinent quotations of the record with specific references to the places in the record where the matter appears U.S. Sup. Ct. R. 20, 28 U.S.C., Appendix (1982) provides that the time for filing a petition for writ of certiorari runs from the date the judgment or decree sought to be reviewed is rendered and that the clerk will refuse to receive any petition which is jurisdictionally out of time.

With respect to Rose's fourteenth amendment due process claims relating to his first attempt to be admitted to the Colorado bar, the state court judgment sought to be reviewed is in fact the Colorado Supreme Court's 1977 denial of his application for admission, including its April 1977 refusal to reconsider the matter, not as Rose contends, the court's refusal, eight years later, to declare the proceedings which led to the denial void. The factual allegations which form the basis of petitioner's due process claims were reviewable in 1977 following the Colorado court's denial of his petition for reconsideration. In addition, Rose failed to supply this court with relevant information from the record concerning the stage at which and the manner in which his federal due process arguments were raised in the state court proceedings. Contrary to his assertion that he first presented his federal due process arguments to the Colorado Supreme court in his 1985 petition for relief (petition for writ of certiorari at p. 3), he had previously submitted such claims to the court. Respondent's appendices A and E, at pp. 1b through 4b and 28b and 29b, respectively.

The event which forms the basis of petitioner's claims relating to the rules and orders of confidentiality was the publication of certain information concerning the denial of his first application in the dissent in *In re Admission of Rose*, 50 U.S.L.W. 3714 (March 9, 1982). Several months after the publication of such information, Rose submitted to the Colorado Supreme Court a motion to withdraw rules and orders of confidentiality. Petitioner's appendix W at pp. 235a through 239a. The Colorado Supreme Court responded to the motion by releasing Rose from the rules and orders of confidentiality to the extent necessary to permit him to respond to the information published in this court's dissent. Petitioner's appendix B at pp. 3a and 4a. The manner in which the Colorado court disposed of that motion is in fact what Rose seeks to have reviewed here. Rose could have but failed to raise his first amendment arguments with the Colorado Supreme Court in 1982. His failure to raise his constitutional arguments when he first submitted his underlying claims to the state court should preclude this court from now considering such claims. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, fn. 16 at 483-485 (1983). In addition, by neglecting to provide this court with a copy of his July 1985 petition, Rose has failed to inform this court of the method or manner in which his first amendment claims were presented to the Colorado court. Although Rose alluded to first amendment issues in his 1985 petition to the Colorado Supreme Court, he failed to provide the court with support for his arguments either in his petition for relief (respondent's appendix B at pp. 6b through 22b) or in his supporting memorandum (excerpt from memorandum in support of petition for relief, respondent's appendix H at pp. 41b through 50b).

II.

NO SPECIAL AND IMPORTANT REASONS EXIST FOR THE EXERCISE OF THIS COURT'S DISCRETION TO GRANT A WRIT OF CERTIORARI IN THIS CASE.

Even if Rose's failure to pursue appellate remedies in 1977 and 1982 does not jurisdictionally bar this court's consideration of the issues presented here, there are no special and important reasons which exist for the granting of a writ of certiorari in this case. U.S. Sup. Ct. R. 17, 28 U.S.C., Appendix (1982), provides that review on writ of certiorari is discretionary with this court and will be granted only when there are "special and important reasons" therefor. In determining whether "special and important reasons" exist this court requires that the issues presented be of interest to the public, not just the parties. *Rice v. Sioux City Cemetery,* 349 U.S. 70, 74 (1955); *Lane & Bowler Corporation v. Western Well Works, Inc.,* 261 U.S. 387, 393 (1923). Certiorari jurisdiction is conferred upon this court "to bring up questions of importance which it is in the public interest to have decided by this court of last resort . . . not . . . merely to give the defeated party . . . another hearing." *Magnum Import Company v. Francois Joseph de Spoturno Coty,* 262 U.S. 159, 163 (1923). "Special and important reasons" imply a reach to a problem "beyond the academic or episodic." *Rice v. Sioux City Cemetery, supra* at 74. If a claim is based upon a constitutionally infirm law which has been repealed, questions regarding its constitutionality are no longer of public importance. *Rice v. Sioux City Cemetery, supra* at 75 through 77; *District of Columbia v. Sweeney,* 310 U.S. 631 (1940).

Rose has been admitted to the Colorado bar. The circumstances surrounding his first application for admission and the denial thereof are of interest only to the original parties, Mr. Rose and the Colorado Supreme Court. He admits that the rules applicable to his admission proceedings have been repealed and replaced with rules which he argues more clearly address the due process requirements of the fourteenth amendment in state bar admission proceedings. Respondent's appendix B at p. 8b. What Rose seeks from this court is vindication, a determination that rules which are no longer applicable were applied eight years ago in a manner which deprived him of due process. In addition, Rose seeks a determination not only that he was denied due process but also that because of such denial the factual findings of the bar committee were incorrect. In order for this court to reach such conclusions it would be necessary not only to perform an appellate review of the record but also to make findings with respect to disputed or stale facts by taking at face value certain allegations made by Rose in his petition for writ of certiorari. That is precisely the relief requested by petitioner from the current members of the Colorado Supreme Court in his 1985 petition.

Although Rose alleges that the Colorado Supreme Court, in denying his 1985 petition for relief, refused to grant him an opportunity to clear his name and that at least he should be afforded a name clearing hearing (petition for writ of certiorari at pp. 28 through 30), the 1985 petition clearly shows that no such relief was in fact requested. Rather, he requested the Colorado Supreme Court to determine that because he had been denied due process, the proceedings relating to the initial refusal to

admit him to the Colorado bar were void *ab initio,* and to expunge his records relating to those proceedings. Respondent's appendix B at pp. 6b, 7b and 22b. The Colorado Supreme Court properly refused to grant his request given (1) the fact that in his second application for admission to the Colorado bar Rose admitted the validity of the factual findings and the impropriety of actions on which the denial of his first application was based, (respondent's appendix E at pp. 30b, 32b, and 33b); and (2) the fact that Rose specifically asserted the defense of *res judicata* in the second round of admission proceedings with respect to factual determinations made in the first (respondent's appendix F at p. 35b).

Rose has been admitted to practice law in the State of Colorado and by such admission, his name has been cleared with respect to the fact of the original denial. A declaration from this court which somehow vindicates him with respect to the fact that he was not admitted on his first application is clearly only of interest to him. No "special or important reasons" exist for the granting of his petition to review the circumstances surrounding the denial of his first application.

Similarly, no "special or important reasons" exist for the granting of certiorari to review Rose's claims relating to the rules and orders of confidentiality applicable to his case. Colo. R. Civ. P. 216, which was applicable during the proceedings relating to Rose's admission, is no longer in effect. It is presently of interest only in connection with Rose's case and is not of interest to the public generally. Admittedly Rose continues to be affected by the rule and the special master's order which determined its applica-

bility to Rose's second round of admission proceedings (petitioner's appendix F at pp. 30a and 31a). However, as a practical matter the relief Rose seeks in this court, the ability to publicly respond to the allegations in Chief Justice Burger's dissent in *In re Admission of Rose,* has already been provided by the Colorado Supreme Court. Rose claims to be injured by "false and defamatory" statements about him contained in the Burger dissent. Such statements were based upon specific information provided to this court with Rose's consent. Rose has been relieved of the effect of Colo. R. Civ. P. 216 with respect to all the information disclosed to this court and which formed the basis for the information published in the dissent.

Rose asserts first amendment claims relating to the special master's order entered in connection with his reapplication proceedings. He argues that such order constitutes an unconstitutional prior restraint on his first amendment rights of freedom of speech analogous to gag orders entered in the context of criminal proceedings. Petition for writ of certiorari at pp. 53 through 63. The analogy is misleading. The special master's order, which by its terms relates only to the reapplication proceedings, does not of itself impose restraints upon the parties to such proceedings but rather states the applicability of then effective Colo. R. Civ. P. 216. Petitioner's complaint is not with such order, which covers matters which are irrevelant to his due process claims resulting from the first round of admission proceedings, but rather with the former rule itself.

Former Colo. R. Civ. P. 216 protected both the state's interest in receiving candid information concerning appli-

cants to its bar and the privacy interests of such applicants by requiring that all admission proceedings be kept confidential except to the extent reasonably necessary to prepare for hearing. Respondent's appendix C at p. 23b. The current rules governing bar admission procedures protect both such interests in a different way. Colo. R. Civ. P. 201.10(2) (c) now provides that admission proceedings are confidential unless the applicant requests otherwise. Petitioner's appendix BB at p. 272a. The interests of third persons and, therefore, of the state in receiving candid information concerning an applicant are protected by Colo. R. Civ. P. 201.2(5) which provides that "[a]ll information provided to the Bar Committee concerning the . . . ethical or moral qualifications of an applicant shall be absolutely privileged and no lawsuit may be predicated thereon." Petitioner's appendix BB at 252a.

Under former Colo. R. Civ. P. 216 the respective interests of the state, third persons and the applicant were furthered by the understanding and agreement of all participants that bar admission proceedings were to be kept confidential. Rose not only agreed that the proceedings relating to his applications should remain confidential, he in fact requested assurance that such would be the case. Petition for writ of certiorari at 19. At no point did the Colorado Supreme Court breach its agreement to keep Rose's records confidential. However, because of the publication of confidential information by this court, Rose now requests an order compelling the Colorado Supreme Court to breach the confidentiality of persons who furnished information in connection with Rose's applications, regardless of whether such information actually affected him.

The relief needed by Rose has been adequately provided by the Colorado Supreme Court. The relief actually requested by him is much broader than necessary to protect his interests and fails to protect the intrests of other participants in his admission proceedings.

CONCLUSION

Because of petitioner's failure to pursue his appellate remedies from the orders which in fact form the basis of his claims and because of the lack of special and important reasons for the consideration of such claims, respondent respectfully requests this court to deny the petition for writ of certiorari.

DATED this 27 day of February, 1986.

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Attorney General

CHARLES B. HOWE
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APPENDIX

TABLE OF CONTENTS

Page

A. Petition, *In the Matter of the Application of Michael T. Rose*, April 8, 1977 ..... 1b

B. Petition for Relief, *In re the Application of Michael T. Rose*, July 2, 1985 ..... 6b

C. Rule 216, Colorado Rules of Civil Procedure 23b

D. Rule 217, Colorado Rules of Civil Procedure 25b

E. Amended Petition for Admission, *In the Matter of Michael Thomas Rose*, May 31, 1979 (without exhibits) 27b

F. Applicant's Motion to Dismiss Report of Special Counsel, *In re the Application of Michael Thomas Rose*, February 10, 1980 ..... 35b

G. Letter to Justice Groves from Michael T. Rose, March 16, 1979 ..... 40b

H. Excerpt from Memorandum in Support of Petition for Relief, *In re the Application of Michael T. Rose*, July 2, 1985 ..... 41b

APPENDIX A

IN THE SUPREME COURT FOR THE
STATE OF COLORADO
No. ————

In the Matter of the Application of
MICHAEL THOMAS ROSE a/k/a
MICHAEL T. ROSE,

For Admission to the Bar of the
State of Colorado

PETITION
UNDER RULE 217,
COLORADO RULES OF
CIVIL PROCEDURE

(Filed April 1977)

COMES NOW the Applicant, Michael T. Rose, by and through his attorneys, Hochstadt, Straw & Davis, P.C., and hereby petitions this Honorable Court, pursuant to Rule 217 of the Colorado Rules of Civil Procedure, as follows:

1. That by an amended en banc Order of this Honorable Court, nunc pro tunc to January 6, 1977, the recommendation of the Bar Committee of the Colorado State Board of Law Examiners (Committee) was approved.

2. That in accordance with the Report of the Bar Committee, the Committee in a five to one vote, recommended against the admission of the above Applicant to the Bar of the State of Colorado.

3. That the Committee consisted of the following members, to wit: Barnard Houtchens, Chairman, Donald S. Stubbs, Jacob L. Sherman, Warren L. Turner, Cover Mendenhall, and Senator Roger Cisneros.

4. That the Committee in its said Report indicated that it conducted extensive inquiry into the Applicant's

moral and ethical fitness, and pursuant to C.R.C.P. Rules 216 and 217, held "Hearings" on April 30, 1976 and June 4, 1976.

5. That the following members of the Committee *failed* to attend the alleged Hearing of April 30, 1976, to wit: Jacob L. Sherman, Warren L. Turner, and Cover Mendenhall.

6. That the following members of the Committee *failed* to attend the alleged Hearing of June 4, 1976, to wit: Donald S. Stubbs, Barnard Houtchens, and Cover Mendenhall.

7. That the five members of the Committee who recommended against the admission of Applicant, failed to attend either one or both of the alleged Hearings, as aforesaid; the one Committee member who attended both the Hearings and conducted part of the Committee's investigation, recommended the admission of Applicant.

8. That no transcript of either of the alleged Hearings had been prepared for the nonattending Committee members as of the date of the Committee's Report to this Court.

9. That at no time prior to the alleged Hearings, was the Applicant specifically appraised of the nature of the reasons for the Committee members failing to be convinced of Applicant's good moral character.

10. At no time during the course of the alleged Hearings was Applicant afforded the opportunity to confront and cross-examine his accusers.

11. At no time during the course of the proceedings did the Applicant have the opportunity to present evidence to the *entire* Committee.

12. Rule 217 of the Colorado Rules of Civil Procedure provides:

> ". . . No applicant will be refused admission by reason of any ethical or moral disqualification *without an opportunity to be heard* as the Court shall direct." (Emphasis added)

13. That in accordance with *Schware v. Board of Bar Examiners of New Mexico*, 353 U.S. 232 (1957) the Applicant should have been given a Hearing which does not contravene the Due Process clause of the Fourteenth Amendment to the United States Constitution.

14. That in accordance with *Schware, supra*, and *Wilner v. Committee*, 373 U.S. 96 (1963) the components of Due Process in cases where a State seeks to exclude a person from the practice of law are:

a. The right to have sufficient notice given to the Applicant so that the Applicant is appraised of the reasons that he has failed to convince the Committee of his good moral character.

b. The right to present his evidence before the *entire* fact finding committee, who shall be charged with the duty of making recommendations based on all of the evidence presented, including Applicant's evidence.

c. The right to confront and cross-examine those persons whose accusations may deprive the Applicant of his livelihood.

d. The right to be given notice of and the opportunity to refute *ex parte* statements or reports.

15. As aforesaid, Applicant was not afforded the above enumerated rights as is required by Rule 217 of the

Colorado Rules of Civil Procedure, the Fourteenth Amendment to the United States Constitution, and the Constitution of the State of Colorado.

WHEREFORE, Applicant prays as follows:

1. That this Honorable Court reject the recommendations of the Committee and amend its Order to admit the Applicant to the Bar of the State of Colorado.

2. Or in the alternative void the Amended Order of January 6, 1977, and grant the Applicant the opportunity to be heard *de novo* in accordance with the Due Process requirements of Rule 217 of the Colorado Rules of Civil Procedure, the Fourteenth Amendment to the United States Constitution, and the Constitution of the State of Colorado.

Respectfully submitted,

HOCHSTADT, STRAW & DAVIS, P.C.
By /s/ Jordan Hochstadt
Jordan Hochstadt, No. 106
Attorneys for Applicant
1700 Broadway, Suite 1211
Denver, Colorado 80290
892-5708

Address of Applicant:

953 Fillmore Street
Denver, Colorado 80206

STATE OF COLORADO)
) ss.
City and County of Denver)

MICHAEL THOMAS ROSE also known as MICHAEL T. ROSE, of lawful age, being first duly sworn upon his oath deposes and says:

1. That he is the above-named Applicant.

2. That he has read the above and foregoing Petition and that the matters set forth therein are true according to his own best belief and knowledge.

.....

MICHAEL THOMAS ROSE

Subscribed and sworn to before me this 8th day of April, 1977, by MICHAEL THOMAS ROSE.

.....

Notary Public

My Commission expires:

(Original Signed and Duly Verified)

APPENDIX B

SUPREME COURT, STATE OF COLORADO

No.

PETITION FOR RELIEF

(Filed July 2, 1985)

(Denied En Banc 10/17/85)

IN RE THE APPLICATION OF MICHAEL T. ROSE FOR ADMISSION TO THE BAR OF THE STATE OF COLORADO

MORRISON & FOERSTER
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ATTORNEYS FOR PETITIONER
MICHAEL T. ROSE

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION OF
COLORADO, INC.

Petitioner Michael T. Rose, through the American Civil Liberties Union Foundation of Colorado, Inc. and his attorneys, Morrison & Foerster, petitions this Honorable Court to: (1) declare the findings and recommendation by the Bar Committee of the Colorado State Board of Law Examiners ("Committee"), dated December 27, 1976, on Mr. Rose's initial application for admission to the Colorado Bar, null and void *ab initio* for lack of due process; (2) declare the Colorado Supreme Court's Order, dated January 6, 1977, denying Mr. Rose admission to the Colorado Bar, null and void *ab initio* for lack of due process;

(3) expunge the entire record of Mr. Rose's initial application to the Colorado Bar; and (4) release Mr. Rose from all rules and orders of confidentiality which prevent him from commenting on his initial application to the Colorado Bar.

In support of this Petition, Mr. Rose states as follows:[1]

1. In December, 1975, Mr. Rose applied for admission to the Colorado Bar. On December 3, 1976, the Committee voted to recommend to this Court that Mr. Rose's application be rejected. Letter from Barnard Houtchens to Colorado Supreme Court (December 6, 1976), 1 [hereinafter cited as "Houtchens Letter"].[2] By report dated December 27, 1976, the Committee transmitted its findings and recommendation to this Court. *Report of the Bar Committee Pursuant to C.R.C.P. Rule 212* [hereinafter cited as *"Committee Report"*].[3] On January 6, 1977, this Court denied Mr. Rose admission. Order, *In the Matter of the Application of Michael Thomas Rose for Admission to the Colorado Bar* (January 6, 1977).[4]

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[1]Mr. Rose is also submitting a Memorandum in Support of Petition for Relief ("Memorandum"), which more fully presents the factual and legal arguments which compel this Honorable Court to grant the relief requested in this Petition. The Memorandum contains all citations to legal authority.

Appendices cited in this Petition and in the Memorandum are being submitted under separate cover.

[2]Appendix 1.

[3]Appendix 2.

[4]Appendix 3.

2. On November 10, 1982, this Court repealed Colo. R. Civ. P. 201-220 and 222-225, which governed admission to the Colorado Bar when Mr. Rose was denied admission, and amended and reenacted them as Colo. R. Civ. P. 201. Colo. R. Civ. P. 201, unlike the rules in effect when Mr. Rose was denied admission, brought Colorado's admission procedure into compliance with the due process requirements of the Fifth and Fourteenth Amendments to the United States Constitution. Nevertheless, the procedure by which Mr. Rose was denied admission in 1977 lacked fundamental elements of due process, including:

(a) Due process requires that an applicant be notified of the charges against him and upon which he is to be denied admission. *E.g., Willner v. The Committee on Character and Fitness*, 373 U.S. 96, 105 (1963) (*See*, Memorandum at 3). The applicant must be notified before a final decision is reached, so he has a meaningful opportunity to refute the charges at a full hearing. Mr. Rose was denied this right. He was never notified, orally or in writing, until after his application was rejected, of the charges under consideration or upon which the Committee intended to recommend that his application be rejected. Even worse, and most critically, the Committee misinformed Mr. Rose that it was not considering particular charges which it later used as grounds to deny him admission. *Reporter's Transcript of April 30, 1976 Hearing*, 65-66 [hereinafter cited as "*April 30 Transcript*"][5]; *Reporter's Transcript of June 4, 1976 Hearing*, 14-15

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[5]Appendix 4.

[hereinafter cited as *"June 4 Transcript"*].[6] Indeed, on numerous occasions during the hearings, even Committee members expressed confusion as to the nature of the charges. *April 30 Transcript, supra,* at 57-59, 65-66.[7] By failing to inform Mr. Rose — indeed by misinforming him — of the charges, the Committee denied Mr. Rose the opportunity to rebut the charges, which is a cornerstone of procedural due process.

(b) Due process requires that the applicant be given a full hearing to rebut the charges against him. *E.g., Willner,* 373 U.S. at 105 (*See,* Memorandum at 14). Mr. Rose was denied this right. On December 3, 1976, six members of the Bar Committee voted five to one to deny Mr. Rose admission. Houtchens Letter, *supra* p. 2, at 1.[8] Before the vote "hearings"[9] in which Mr. Rose participated were held on April 30, 1976 and June 4, 1976. *April 30 Transcript, supra* p. 3;[10] *June 4 Transcript, supra* p. 3.[11] Committee member Cover Mendenhall did not attend either hearing and members Donald S. Stubbs and Bernard Houtchens, as well as Cover Mendenhall, did not attend the June 4, 1976 hearing. (Compare *April 30 Transcript,*

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[6]Appendix 5.

[7]Appendix 4.

[8]Appendix 1.

[9]Committee members variously characterized these "hearings" as an "interview," *April 30 Transcript, supra* p. 3, at 72, and as a "meeting." *June 4 Transcript, supra* p. 3, at 1.

[10]Appendix 4.

[11]Appendix 5.

supra p. 3,[12] and *June 4 Transcript, supra* p. 3,[13] with Houtchens Letter, *supra* p. 2, at 1).[14] Nevertheless, Messrs. Mendenhall, Stubbs and Houtchens voted to reject Mr. Rose's application. These members could not have reviewed transcripts of the testimony they had missed, including Mr. Rose's testimony, because transcripts were not prepared until after Mr. Rose was denied admission. Houtchens Letter, *supra* p. 2, at 1.[15] Thus, over one-half of the Committee members who voted to deny Mr. Rose admission failed to hear or review all the evidence, including all of Mr. Rose's testimony. Indeed, Mr. Mendenhall failed to hear or review any testimony, including any of Mr. Rose's testimony. This denied Mr. Rose the full hearing to which he was entitled by the Fifth and Fourteenth Amendments to the United States Constitution. *E.g. Willner*, 373 U.S. at 105.

(c) An applicant can not be denied admission based in part or in whole on *ex parte* statements and documents. *Id.* at 105-06. Rather, the applicant must be confronted with, and be given an opportunity to rebut, all evidence which is used ultimately to deny him admission. The applicant also must be given an opportunity to confront and to cross-examine his accusers, including the authors of the *ex parte* statements and documents. *Id.* The Committee violated these due process requirements. It did not disclose to Mr. Rose critical evidence used against him; there-

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[12]Appendix 4.

[13]Appendix 5.

[14]Appendix 1.

[15]*Id.*

fore, he was denied the right to confront and to rebut this evidence. The Committee also never produced, or gave Mr. Rose the opportunity and authority to confront, those individuals upon whose accusations the Committee and this Honorable Court denied him admission; therefore, Mr. Rose was denied the right to confront and to cross-examine his accusers, including the authors of the *ex parte* statements and documents. In sum, the Committee and this Court violated the due process proscription against using *ex parte* statements and documents as a basis to deny an applicant admission.

(d) In recommending to the Colorado Supreme Court that Mr. Rose be denied admission, the Committee stated that it had relied, among other sources, upon the April 30, 1976 and June 4, 1976 hearings, a letter dated September 24, 1976 from Richard F. Hennessey to the Colorado Board of Law Examiners [hereinafter cited as "*Hennessey Report*"][16], and the report of Committee member (now Honorable District Judge) Roger Cisneros, *Report by Roger Cisneros to Bar Committee* [hereinafter cited as "*Cisneros Report*"].[17] *Committee Report, supra* p. 2, at 1.[18] The Honorable District Judge Cisneros had attended both hearings, had investigated Mr. Rose for the Committee, and had recommended to the Committee and voted that he be

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[16]Appendix 6.

[17]Appendix 7.

[18]Appendix 2.

admitted to the Bar. *Cisneros Report, supra* p.6 at 2.[19] The *Hennessey Report*, on the other hand, was issued on September 24, 1976, over three months after the last hearing. Mr. Rose did not know that Mr. Hennessey was investigating him or of the existence of the *Hennessey Report* until after his application was rejected. He also neither was confronted with the *Hennessey Report* nor was given an opportunity to rebut its devastating and apparently dispositive conclusions. In the *Hennessey Report*, which was labeled "Personal and Confidential," Mr. Hennessey concluded that Mr. Rose was guilty of misconduct with which he was not charged. Although Mr. Hennessey interviewed numerous individuals who had a motive to malign Mr. Rose, he never interviewed Mr. Rose or any one of a number of people who would speak on his behalf. Because the investigation was covert, the individuals upon whose statements Mr. Hennessey concluded that Mr. Rose was guilty, were never produced for confrontation and for cross-examination by the Committee or by Mr. Rose. Moreover, Mr. Rose never had an opportunity to confront and to rebut the contents of those individuals' statements. Notwithstanding these due process inadequacies, after Mr. Rose was denied admission, he and his counsel were informed by Justice Groves that the *Hennessey Report* was "what sank" him. Affidavit of Michael T. Rose, ¶ 3 [hereinafter cited as "Rose Affidavit"].[20] The Committee's express reliance upon the *ex parte Hennessey Report* further denied Mr. Rose his due process right of confrontation and cross-examination.

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[19]Appendix 7.

[20]Appendix 8

(e) Justice Groves, who was disqualified from voting on Mr. Rose's application, nevertheless urged the other Justices of this Honorable Court, in two "Personal and Confidential" memoranda, to deny Mr. Rose admission. Memorandum from Justice James K. Groves to the Colorado Supreme Court (December 8, 1976);[21] Memorandum from Justice James K. Groves to the Colorado Supreme Court (January 5, 1977).[22]

3. Rather than subside over time, the injuries which Mr. Rose has suffered as a direct result of this denial of due process continue to escalate. As only one of many examples, on May 13, 1985, an attorney opposing Mr. Rose cited the Committee's findings as evidence that Mr. Rose is dishonest. Therefore, the attorney concluded, the statements upon which Mr. Rose based a motion for partial summary judgment should not be accepted as true. Respondents' Memorandum in Opposition to Michael T. Rose's Motion for Partial Summary Judgment, *Rose v. Monex International, Ltd.*, 3, n.4, and 10, n.12, CFTC Docket No. 84-R51 (Commodity Futures Trading Commission May 13, 1985).[23] This is but one example of the continuing damage to Mr. Rose directly resulting from the Colorado proceedings.

4. Neither Mr. Rose, the Committee nor this Honorable Court could have foreseen the extent to which these due process violations have wreaked havoc with Mr. Rose's personal and professional reputations. It has become vir-

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[21]Appendix 9.

[22]Appendix 10.

[23]Appendix 11.

tually impossible for Mr. Rose to practice law and to engage in public discourse about issues in which he is interested, without being confronted with the damaging findings and conclusions of the Committee and of this Honorable Court. This Honorable Court now is positioned to redress these wrongs. Mr. Rose asks to be treated no differently from the manner prescribed by this Court in 1982 in Colo. R. Civ. P. 201.

5. On October 27, 1978, Mr. Rose applied for admission to practice before the United States Supreme Court. The application did not require him to disclose that he had been denied admission to the Colorado Bar. In the interest of candor, however, he did so.

6. Michael Rodak, Jr., Clerk of the United States Supreme Court, requested the Colorado Supreme Court to provide the United States Supreme Court with information about Mr. Rose. Letter from Michael Rodak, Jr. to Justice James K. Groves (January 22, 1979) [hereinafter cited as "Rodak Letter"].[24] Mr. Rodak expressly represented that any information provided "would be held in the strictest confidence." *Id.*

7. Justice Groves forwarded the Rodak letter to Mr. Rose and asked him for authorization to provide information from his file to the United States Supreme Court. Letter from Justice James K. Groves to Michael T. Rose (March 5, 1979) [hereinafter cited as "Groves Letter"].[25]

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[24]Appendix 12.

[25]Appendix 13.

Mr. Rose consented. Mr. Rose's consent was based on Mr. Rodak's written assurance that the information "would be held in the strictest confidence." Rodak Letter, *supra*.[26] Mr. Rose's reliance on this representation was patently reasonable, since it was contained in the Rodak Letter which Justice Groves had forwarded to Mr. Rose.

8. Justice Groves supplied the United States Supreme Court with information critical of Mr. Rose, but with none of the numerous letters and affidavits favorable to him. Letter from Justice James K. Groves to Michael Rodak, Jr. (April 17, 1979).[27]

9. On November 27, 1978, the United States Supreme Court informed Mr. Rose that his application to the United States Supreme Court would be held in abeyance pending action on his reapplication to the Colorado Bar. Letter from Michael Rodak, Jr., Clerk of the United States Supreme Court, to Michael P. Rose (November 27, 1978).[28]

10. On December 1, 1978, while his application to the United States Supreme Court was pending, Mr. Rose reapplied for admission to the Colorado Bar.

11. In approximately May, 1979, a Disciplinary Prosecutor was appointed to investigate Mr. Rose, numerous additional allegations were made against him, and a second Disciplinary Prosecutor was appointed to prosecute those allegations.

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[26]Appendix 12.

[27]Appendix 14.

[28]Appendix 15.

12. On January 3, 1980, this Court appointed James Bunch as Special Master to hold hearings on the allegations against Mr. Rose. However, upon Mr. Rose's motion, Mr. Bunch disqualified himself because his wife was employed by the Colorado Supreme Court Grievance Committee and Donald S. Stubbs, a Committee member who recommended rejecting Mr. Rose's initial application, was Mr. Bunch's partner. The Honorable Judge Harry S. Silverstein replaced Mr. Bunch as Special Master.

13. The new allegations against Mr. Rose were based in part upon an extensive, secret, *ex parte* file of information and allegations provided to the Disciplinary Prosecutor by Justice Groves. Affidavit of Jordon Hochstadt and Richard Strauss, ¶¶ 6-7 [hereinafter cited as "Hochstadt and Strauss Affidavit"][29] Special Master Bunch denied Mr. Rose's request to be supplied a copy of this file, stating that he had been directed to do so by Justice Groves. *Id.* at ¶¶ 8-10.[30] As a result, Mr. Rose was required to defend himself without the benefit of the file used against him by the Disciplinary Prosecutor.

14. A hearing on Mr. Rose's reapplication and on the charges against him was held on February 16, 17 and 18, 1981. On May 8, 1981, the Honorable Judge Harry S. Silverstein, Jr. concluded that Mr. Rose was morally and ethically qualified to practice law and recommended that he be admitted to the Colorado Bar. Master's Report, *In re the Application of Michael T. Rose for Admission to*

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[29]Appendix 16.

[30]*Id.*

the Bar of the State of Colorado (May 8, 1981) [hereinafter cited as "Master's Report"].[31] On May 22, 1981, Mr. Rose was admitted.

15. The Honorable Judge Silverstein expressly ruled that it was not within his jurisdiction to consider the Committee's original findings and recommendation. *Id.* at 2.

16. It cannot be overemphasized that Mr. Rose's subsequent admission has not curtailed the extensive damage to him which, to this day, continues to result from the initial rejection. Judge Silverstein concluded that Mr. Rose was rehabilitated from any conduct which caused the initial rejection. There was no consideration of whether the Committee's original findings and recommendation were erroneous or void for lack of due process. The original findings and recommendation continue to damage Mr. Rose personally and professionally. This damage is exacerbated by this Honorable Court's rules and orders of confidentiality, which prevent Mr. Rose from explaining his record and which infringe upon his First Amendment rights.

17. If, during the initial review process, the Committee had afforded due process to Mr. Rose, the Committee's findings may not have been adverse to him, Mr. Rose may not have been denied admission, and his injuries may have been lessened significantly. Mr. Rose believes the Committee's findings and recommendation were erroneous; that determinations of character and fitness to practice law are highly subjective and cannot be properly be made

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[31] Appendix 17.

absent proceedings that comply with due process; and that he would not have been denied admission and would not have had adverse findings made against him, if the Committtee and this Honorable Court had proceeded fairly.

18. Mr. Rose next petitioned the United States Supreme Court to reconsider his application. On March 8, 1982, by a seven to two vote, he was admitted to practice before the United States Supreme Court. *In re Admission of Rose*, 50 U.S.L.W. 3714 (March 8, 1982) (Stevens, J., concurring, Burger, C.J., O'Connor, J., dissenting).

19. The Honorable Chief Justice Warren Burger wrote and published a scathing dissent to the majority opinion. *Id.* In his dissent, Justice Burger published extremely damaging misrepresentations about Mr. Rose. These statements were based upon the supposedly confidential information which Justice Groves had provided to the Supreme Court. The publication of this information was in derogation of the Supreme Court's explicit undertaking that information about Mr. Rose "would be held in strictest confidence." Rodak Letter, *supra* p.10.[32]

20. Chief Justice Burger's dissent also was reported in the *Washington Post*, the *New York Times*, the *National Law Journal*, the *Denver Post*, the *Colorado Springs Sun*, and other publications.[33]

21. The widespread publication and dissemination of inaccurate, misleading and defamatory information, which originated from the Colorado proceedings, have seriously damaged Mr. Rose's personal and professional reputations,

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[32]Appendix 12.

[33]Appendix 18.

and have caused him extreme emotional distress and other injuries.

22. Two prominent Wall Street law firms and one federal agency either withdrew or suspended employment offers to Mr. Rose. Their decisions were based on Mr. Rose's disclosure of the Colorado proceedings. Rose Affidavit, *supra* p. 8, at ¶ 4D.

23. Additionally, potential clients, including Colonel Donald C. Odegard, Sr., have been discouraged or have refrained from employing Mr. Rose as counsel, because of the Colorado proceedings and the United States Supreme Court's unauthorized publication of the information provided by Justice Groves. Affidavit of Colonel Donald C. Odegard, Jr.[34]

24. Because of the Colorado proceedings, Tommy Yearout, an Alabama attorney, initially refused to continue representing Mr. Rose in a contract dispute. Letter from Tommy Yearout to Michael T. Rose (August 13, 1982).[35]

25. Certain rules and orders prevent Mr. Rose from exercising his First Amendment right to comment on the circumstances surrounding the Colorado proceedings. First, Colo. R. Civ. P. 217, which was in effect when Mr. Rose's application was denied, provides that information provided to the Committee "shall be held confidential by the Committee and the Court unless in the opinion of the Court its disclosure becomes necessary in a hearing on the application." Second, in January, 1980, at Mr. Rose's re-

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[34]Appendix 19.

[35]Appendix 20.

quest, Special Master Bunch entered an Order of Confidentiality. Hochstadt and Strauss Affidavit, *supra* p. 12, at ¶¶ 11-12.[36] On October 18, 1982, Mr. Rose filed with this Court a Motion to Withdraw Rules and Orders of Confidentiality. Motion to Withdraw Rules and Orders of Confidentiality, *In re the Application of Michael T. Rose for Admission to the Bar of the State of Colorado* (October 18, 1982).[37] On October 27, 1982, this Court advised Mr. Rose that he could comment publicly only on the documents which Justice Groves had forwarded to the United States Supreme Court. As to all other documents and matters, however, the Court refused to "grant permission to waive the rules and orders of confidentiality." Letter from David W. Brezina, Clerk of the Colorado Supreme Court, to Michael T. Rose (October 27, 1982.)[38]

26. These rules and orders exacerbate Mr. Rose's injuries because they prevent him from explaining his understanding of the Colorado proceedings. They are most injurious when Mr. Rose is faced with inquiries from existing and potential clients, potential employers, other attorneys, other military officers, state bar admission committees[39] and the press.

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[36]Appendix 16.

[37]Appendix 21.

[38]Appendix 22.

[39]Mr. Rose is licensed to practice law in Colorado, California, Minnesota, Pennsylvania and South Carolina, and in several Federal courts, including the United States Supreme Court. His application for admission to at least one state Supreme Court is being held in abeyance pending a decision on this Petition. *Rose Affidavit, supra* p.8, at ¶ 4F.

27. Little, if anything, about the reasons for the rejection of Mr. Rose's application remains confidential. What does remain confidential is the evidence favorable to Mr. Rose and the unfair manner in which he was treated. This is an additional reason for releasing him from the rules and orders of confidentiality. Despite the United States Supreme Court's assurances, the allegations against Mr. Rose arising from the Colorado proceedings were disseminated widely as a result of Chief Justice Burger's published dissent. Additionally, Justice Groves provided to a United States Congressman "more [information about Mr. Rose] than we generally disclose without the permission of the applicant." Letter from Justice James K. Groves to Congressman Charles H. Wilson (October 26, 1977).[40] Justice Groves did request the Congressman to "treat [the information] as rather privileged." *Id.* Third, Justice Groves kept a "mailing list," on which he placed a United States Congressman and an unknown number of other persons, to whom he provided information about "the future of Mr. Rose." *Id.*

28. Mr. Rose finds himself in an untenable position. The rules and orders of confidentiality did not prevent information adverse to him from being disseminated. Nevertheless, these very same rules and orders prevent him from responding to inquiries resulting from the dissemination of the damaging information. This is unfair. This Honorable Court should release Mr. Rose from this cage of silence.

29. This Honorable Court's restrictions on Mr. Rose's ability to comment regarding his initial application to the

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[40]Appendix 23.

Colorado Bar also abridge his rights under the First Amendment to the United States Constitution.

WHEREFORE, Petitioner Michael T. Rose respectfully requests this Honorable Court to issue an Order:

1. Declaring the findings and recommendation by the Bar Committee of the Colorado State Board of Law Examiners, dated December 27, 1976, on Mr. Rose's initial application for admission to the Colorado Bar, null and void *ab initio* for lack of due process;

2. Declaring the Order by the Colorado Supreme Court, dated January 6, 1977, — that Mr. Rose not be admitted to the Colorado Bar — null and void *ab initio* for lack of due process;

3. Expunging the entire record of Mr. Rose's initial application to the Colorado Bar;

4. Releasing Mr. Rose from all rules and orders of confidentiality which prevent him from explaining his record; and

5. Granting Mr. Rose any other relief which this Honorable Court deems appropriate.

Dated July 2nd, 1985.

/s/ Robert F. Hanley (No. 12672)
John V. McDermott (No. 11854)

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ATTORNEYS FOR MICHAEL T. ROSE

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF COLORADO, INC.

APPENDIX C

Colorado Rules of Civil Procedure

Rule 216. Class C—Notice of Applications—Objections—Reports and Recommendations

Within ten days after each examination of applicants in Class C the Law Committee shall furnish to the Clerk of the Supreme Court, the Clerk of the District Court in each county, and to the Secretary of the Colorado Bar Association, the names and addresses of all persons who have taken said examination. Each clerk shall immediately post the same in a conspicuous place in his office, keep them so posted for a period of thirty days, and furnish them to newspapers as may be requested. Dates of posting shall be certified on each notice by the clerks of the respective courts.

Any person may present to the Law Committee any information bearing upon the question of the propriety of the admission of any such applicant; and any persons, or any Bar association may object to such admission. Should information so presented relate to the ethical or moral qualifications of the applicant it shall be immediately referred to the Bar Committee for its investigation and report. All such information shall be held confidential by the Committee and the Court unless in the opinion of the Court its disclosure becomes necessary in a hearing on the application. The reports of the Bar Committee on applicants in Class C, shall be delivered to the Secretary of the Law Committee within twenty days after the final day of posting in the office of the Clerk of the Supreme Court of the list of applicants. Said reports shall cover any objections made to the admission of any applicant and

all special information filed with the Committee, and shall set forth the recommendation of each Committee and reasons therefor.

(Amended and effective March 28, 1975.)

APPENDIX D

Colorado Rules of Civil Procedure
Rule 217. Hearing

As soon as convenient after the receipt of the reports of the Committees the Court will consider the same and order that the several applicants be or be not admitted, or that their applications be continued for further hearing or consideration.

No applicant will be refused admission by reason of any ethical or moral disqualification without an opportunity to be heard as the Court shall direct.

A failing examinee, who has failed the Colorado bar examination more than once, who believes he should have passed the last examination, may petition the Court, setting forth concisely the reasons why he should have received a passing grade. The fee for filing such petition, if any, and assessment of costs of any proceeding, if any, will be as required by the court. If it appears that the petition is without merit it shall be summarily denied. Otherwise, the matter shall be referred to a member of the Law Committee, selected by the Chief Justice or by the Chairman of the Law Committee who shall give the examinee the opportunity to appear and be heard. The examiner shall transmit his findings and recommendations to the Chairman of the Law Committee. The Law Committee, acting en banc or by committee appointed by the Chairman, shall review the findings and recommendations and transmit them to the Court with the Committee's recommendation. The Court shall notify the examinee of its action on the petition. As to an examinee who has taken

the Colorado bar examination only once and failed, the taking of a subsequent examination shall be deemed review of the examinee's answers to the first examination.

(Amended and effective November 13, 1975.)

APPENDIX E

IN THE SUPREME COURT IN AND FOR THE STATE OF COLORADO

No. .....

In the Matter of the Application of
MICHAEL THOMAS ROSE, a/k/a Michael T. Rose and Michael Rose,
For Admission to the Bar of the Supreme Court of the State of Colorado

AMENDED PETITION FOR ADMISSION

(Filed May 31, 1979)

COMES NOW, the Petitioner, *pro se*, and hereby petitions this Honorable Court to grant the Petitioner admission to the Bar of the Supreme Court of the State of Colorado and to authorize and empower the Petitioner to appear in all Courts of Record in the State of Colorado and to practice as an attorney and counselor at law.

AS GROUNDS THEREFOR, Petitioner states unto this Court as follows:

1. On or about January 6, 1978, this Court, *nunc pro tunc*, denied Petitioner admission to the Bar of the Supreme Court of the State of Colorado based upon findings and a recommendation to the Bar Committee of the State Board of Law Examiners of the State of Colorado. A copy of said recommendation has been previously filed with the Court.

2. Petitioner effectively has been denied admission to the Bar of the Supreme Court of the State of Colorado since May, 1976, the month during which Petitioner would have been admitted to the Bar of the Supreme Court of

the State of Colorado but for the investigation of Petitioner by and the recommendation of the Bar Committee of the State Board of Law Examiners of the State of Colorado that Petitioner not be admitted to the Bar of the Supreme Court of the State of Colorado, as referred to hereinabove.

3. In a petition filed with this Court on or about January 6, 1977, Petitioner prayed that this Court either admit Petitioner to the Bar of the Supreme Court of the State of Colorado or grant Petitioner a *de novo* hearing regarding the grounds denying Petitioner admission to the Bar of the Supreme Court of the State of Colorado. As grounds for said Petition, Petitioner alleged that Petitioner had been denied admission to the Bar of the Supreme Court of the State of Colorado in violation of Rule 217 of the Colorado Rules of Civil Procedure and of the Due Process Clauses of the Fourteenth Amendment to the United States Constitution and of the Constitution of the State of Colorado, in that:

A. All five (5) members of the Bar Committee of the State Board of Law Examiners of the State of Colorado who recommended, as hereinabove described, that Petitioner not be admitted to the Bar of the Supreme Court of the State of Colorado failed to attend one or both of the hearings, held on April 30, 1976, and on June 4, 1976, respectively, regarding the moral and ethical fitness of Petitioner (the one member of said Bar Committee who did vote to recommend that Petitioner be admitted to the Bar of the Supreme Court of the State of Colorado did attend both of said hearings);

B. As of the date that the Bar Committee of the State Board of Law Examiners of the State of

Colorado recommended that Petitioner not be admitted to the Bar of the Supreme Court of the State of Colorado, no transcript of either of the hearings referred to hereinabove had been prepared, and, therefore, said members of said Bar Committee who did not attend one or both of said hearings did not base their recommendation not to admit Petitioner to the Bar of the Supreme Court of the State of Colorado upon an evaluation of Petitioner's explanation of the circumstances regarding the conduct upon which was based the denial to Petitioner of admission to the Bar of the Supreme Court of the State of Colorado;

C. At no time prior to the hearings referred to hereinabove was Petitioner specifically appraised of the nature of the reasons for said Bar Committee members failing to be convinced of Petitioner's good moral character;

D. At no time during the course of the hearings referred to hereinabove was Petitioner afforded the opportunity to confront and to cross-examine his accusers;

E. At no time before the denial of Petitioner's application to the Bar of the Supreme Court of the State of Colorado was Petitioner given notice of or an opportunity to refute and to provide evidence with regard to all *ex parte* statements and reports regarding Petitioner; and

F. At no time during the course of the hearings referred to hereinabove did Petitioner have the opportunity to present evidence to the entire Bar Committee of the State Board of Law Examiners of the State of Colorado.

Said Petition was denied by this Court, *en banc*, on April 21, 1977.

4. As a result of said denial to Petitioner of admission to the Bar of the Supreme Court of the State of Colorado, Petitioner has been prohibited from practicing law in his home State of Colorado; has been forced to move outside of Colorado in order for Petitioner to earn his living practicing his profession; has incurred stigma; has suffered great emotional distress and damage to Petitioner's esteem and personal and professional reputations; has had adversely affected and will continue to have adversely affected the possibility that Petitioner might be selected for membership in the Bars of other jurisdictions and for competitive opportunities for which Petitioner has applied and may apply; and has been denied, and continues to be denied, employment opportunities which Petitioner no longer would be denied if Petitioner were admitted to the Bar of the Supreme Court of the State of Colorado. Denial to Petitioner of admission to the Bar of the Supreme Court of the State of Colorado has had a severe adverse effect and will continue to have a severe adverse effect on the course of Petitioner's career. As a result of the above, Petitioner believes that he has been punished sufficiently for his past indiscretion and that nothing further would be gained, including the obtaining of justice or the purpose for which Petitioner was denied admission to the Colorado Bar, by causing Petitioner to continue to suffer, as hereinabove described.

5. The findings referred to hereinabove of said Bar Committee of the State Board of Law Examiners of the State of Colorado no longer are valid and no longer constitute grounds for denying Petitioner admission to the Bar of the Supreme Court of the State of Colorado, for the following reasons:

A. The conclusion reached by the Bar Committee of the State Board of Law Examiners that the "inclinations evidenced by the applicant's conduct are likely to be carried over by the applicant in the practice of law" has proved not to be true, as shown by the fact that since August, 1977, Petitioner has been employed by the law firm of Robins, Davis & Lyons, 1210 Minnesota Building, St. Paul, Minnesota 55101, and, as evidenced by the five Affidavits, attached hereto and incorporated herein by partners of said law firm for whom Petitioner has been working, during said employment Petitioner has engaged in no conduct in any manner adversely reflecting upon Petitioner's integrity or fitness to practice law;

B. Petitioner was admitted in May, 1978, to the Bar of the Supreme Court of the State of Minnesota, after Petitioner passed the Bar Examination administered by the Board of Law Examiners of the State of Minnesota and after an investigation by the Board of Law Examiners of the State of Minnesota of the qualifications of Petitioner to practice law, including, but not limited to, the circumstances of the denial by this Court of Petitioner's admission to the Bar of the Supreme Court of the State of Colorado;

C. Petitioner never knowingly has made any misstatement or misrepresentation concerning his professional status or in any other professional context;

D. Petitioner's suspension by the Supreme Court of the State of Pennsylvania for Petitioner's inadvertent failure to complete required annual registration forms immediately was revoked by, and Petitioner immediately was reinstated in good standing to, the Bar of the Supreme Court of the State of Pennsylvania, after Petitioner completed said registration forms, immediately after Petitioner learned of said suspension; since said re-

instatement, Petitioner has completed all registration forms required by, and Petitioner has remained a member in good standing of, the Bar of the Supreme Court of the State of Pennsylvania;

E. Petitioner's "lack of candor in business and professional matters" and "continued violation of reasonable rules of conduct", found in December, 1976, by the Bar Committee of the Supreme Court of the State of Colorado to exist as a result of Petitioner's activities as a law clerk in a Colorado law firm in early 1976, resulted not from dishonesty or lack of integrity on the part of Petitioner but from poor judgment, inexperience and a lack of supervision and guidance of Petitioner in the private practice of law, and has been mitigated both by the denial to Petitioner of admission to the Bar of this Court and by the experience and guidance obtained by Petitioner during Petitioner's employment with Robins, Davis & Lyons in Minnesota; and

F. Petitioner is a member in good standing of the Bars of the Supreme Courts of the States of Pennsylvania, California and Minnesota and of the United States Court of Military Appeals, the United States Court of Claims, the United States District Court of the District of Minnesota and the United States Fifth Circuit Court of Appeals, and at all times has remained in good standing as a member of each said respective Bar since becoming a member of each said respective Bar, except for the temporary suspension of Petitioner from the Bar of the Supreme Court of the State of Pennsylvania for Petitioner's inadvertent failure to complete required annual registration forms, as hereinabove described.

6. Petitioner has passed the Bar Examinations of the States of Colorado, California, Pennsylvania and Minnesota.

7. Petitioner understands the impropriety of his actions upon which were based his denial of admission to the Bar of the Supreme Court of the State of Colorado; Petitioner earnestly and diligently has attempted to conduct himself according to the highest standards of ethics of his profession and Petitioner shows into this Court that Petitioner has put the knowledge and experience gained from the Court's previous denial of his admission to the Bar of this State to good use, as evidenced by Petitioner's status and good standing in the Bars of the States of Minnesota, California and Pennsylvania, and of other Courts hereinabove described, and by Petitioner's lack of any professional misconduct since the actions constituting the grounds for Petitioner's denial of admission to the Bar of the Supreme Court of the State of Colorado.

8. Petitioner now possesses the moral and ethical qualifications required for Petitioner to counsel and advise others in the conduct of their affairs and Petitioner no longer should be disqualified or prejudiced by the prior findings, conclusions and recommendations of the Bar Committee of the State Board of Law Examiners of the State of Colorado.

WHEREFORE, Petitioner prays that this Court admit Petitioner to the Bar of the Supreme Court of the State of Colorado and authorize and empower Petitioner to appear in all Courts of Record and to practice as an attorney and counselor at law in the State of Colorado.

Respectfully submitted,
Michael T. Rose
Pro Se

Petitioner's Address:
c/o Robins, Davis & Lyons
1210 Minnesota Building
St. Paul, Minnesota 55101
Telephone: (612) 224-5884 (office)
(612) 633-3018 (home)

STATE OF MINNESOTA)
) SS. *AFFIDAVIT*
COUNTY OF RAMSEY)

MICHAEL THOMAS ROSE, a/k/a Michael T. Rose and Michael Rose, of lawful age and being first duly sworn upon his oath, deposes and says:

1. That he is the Petitioner in the foregoing Amended Petition for Admission.

2. That he has read said Petition and that the matters stated therein are true and correct to his own best knowledge and belief.

/s/ Michael T. Rose

Subscribed and sworn to before me
this 30th day of May, 1979.
/s/ Derene Quist
NOTARY PUBLIC
My Commission Expires: Mar. 7, 1984.

(Notary Stamp)

APPENDIX F

IN THE SUPREME COURT
OF THE STATE OF COLORADO

IN RE:

Application for Admission to
The Bar of This Court of:

MICHAEL THOMAS ROSE

APPLICANT'S MOTION TO
DISMISS REPORT OF
SPECIAL COUNSEL

(Filed February 10, 1980)

COMES NOW, Applicant above-named by and through his attorneys, HOCHSTADT, STRAW & DAVIS, P.C. and hereby moves that allegations contained in Paragraphs 1, 2, 3, 6 and 7 of Report of Special Counsel be dismissed and as grounds therefor shows as follows:

1. With respect to the allegations contained in Paragraph 1, which allegations are based upon the report of December 27, 1976 of the Bar Committee of the Board of Law Examiners, Applicant states as follows:

a. Applicant has admitted in the Application which is the subject matter of the present inquiry, that he has been found to have committed certain improper acts during 1976, which acts are set forth in Exhibit "A" to the Report of Special Counsel.

b. Applicant asserts that the findings and subsequent Order of Denial of the Supreme Court of Colorado are res judicata and no useful purpose would be served to relitigate the issues raised therein.

c. Applicant further asserts that the Report of Special Counsel does not indicate any acts of professional misconduct which may have been committed by the Appli-

cant subsequent to December, 1976, which further acts relate to acts of impropriety set forth in said Exhibit "A".

d. Applicant alleges that he has earnestly and diligently attempted to conduct himself according to the highest standards of ethics in his personal and professional life since December, 1976 and has submitted affidavits from several members his former employer, the law firm of Robins, Davis & Lyons attesting to such conduct.

2. With respect to Paragraph 2 of the Report of Special Counsel, Applicant alleges as follows:

a. That matters set forth in Paragraph 2 were initially investigated by Committee Counsel, Richard F. Hennesey, Esq. and were contained in the Report to the Bar Committee authored by said Committee Counsel.

b. The Bar Committee considered the matters which are the subject matter of the allegations contained in Paragraph 2 of the Report of Special Counsel and made no findings of impropriety on behalf of the Applicant with respect to the allegations contained in Paragraph 2 of the Report of Special Counsel.

c. The said matters, having been considered and decided by the Bar Committee, is a bar to the matters being raised herein, and Special Counsel is estopped from collaterally attacking or re-opening the same in these proceedings.

3. With respect to the matters set forth in Paragraph 3 of the Report of Special Counsel, Applicant asserts as follows:

a. That at the time of his original Application for Admission, Applicant disclosed that while he was a

Cadet at the United States Air Force Academy he had been charged and found guilty of "miscellaneous minor infractions of regulations; violation of Cadet Honor Code" and as a result received "demerits, hours, confinement" and was "granted 'discretion' and allowed to remain at the academy".

b. As a result of such disclosure, the matters set forth in Paragraph 3 of the Report of Special Counsel were previously before the Bar Committee, the Board of Law Examiners, and the Supreme Court of the State of Colorado. Neither the Bar Committee, the Board of Law Examiners nor the Supreme Court of Colorado made any findings of improriety relating to the allegations of Paragraph 3 of the Report of Special Counsel which would be sufficient to deny admission to the Bar of the State of Colorado.

c. That the matters set forth in Paragraph 3 of the Report of Special Counsel were previously before and considered by the Bar Committee, the Board of Law Examiners and the Supreme Court of the State of Colorado, is now a bar to the matters being raised in this proceeding, and Special Counsel is estopped from collaterally attacking or re-opening the matters in this proceeding.

4. With rspect to the matters raised in Paragraph 6 of the Report of Special Counsel, Applicant alleges as follows:

a. Applicant has been denied access to documents relevant to the Applicant's defenses to the allegations contained in Paragraph 6 by both the accuser and a Member of the Colorado Supreme Court, although Special Counsel has had access to such documents.

b. That Applicant has been denied and continues to be denied a basic Constitutional Right of cross examination and confrontation of his accuser.

c. That because of the denial of such Constitutional Right, any finding of wrongdoing on the part of Applicant is suspect and can not form the basis for his denial to practice law in the State of Colorado.

5. With respect to the Allegations contained in Paragraph 7 of the Report of Special Counsel, Applicant alleges as follows:

a. That the matters referred to in Paragraph 7 of the Report of Special Counsel have heretofore been litigated in the District Court in and for the County of Jefferson, State of Colorado.

b. Gollehon was represented by able counsel and Applicant was represented by able counsel.

c. At the conclusion of the Trial, the Honorable Winston Wolvington made Findings of Fact, Conclusions of Law and Judgment, a copy of which is attached hereto and made a part hereof as Exhibit "1".

d. It is submitted that there was no finding of any wrongdoing on the part of the Applicant nor of technical deficiencies in the documents drafted by the Applicant as is asserted in the Report of Special Counsel, rather the Court found that certain conditions precedent had not occurred, and thusly the Applicant was not liable.

e. That the matters referred to in Paragraph 7 of the Report of Special Counsel have been the subject of Judicial Determination is now a bar for the matters to be

considered in the within proceeding and Special Counsel is estopped to collaterally attack or re-open such matter.

WHEREFORE, Applicant prays that the matters raised in Paragraphs 1, 2, 3, 6, and 7 of the Report of Special Counsel be dismissed for the reasons set forth above.

Respectfully Submitted,

HOCHSTADT, STRAW & DAVIS, P.C.

/s/ Jordan Hochstadt, #106
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APPENDIX G

LAW OFFICES
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March 16, 1979

The Honorable James K. Groves
Justice
Supreme Court, State of Colorado
2 East 14th Avenue, Room 416
Denver, Colorado 80203

Dear Justice Groves:

Thank you very much for your letter to me dated March 5, 1979, and the letter enclosed therewith to you from Mr. Michael Rodak, Jr., Clerk of the Supreme Court of the United States. Thank you in particular for protecting my privacy by declining to provide information about me without my permission.

You have my permission to disclose to the United States Supreme Court information and documents in the possession of the Colorado Supreme Court which may assist in evaluating my character and fitness to be a member of the Bar of the Supreme Court of the United States. I ask that you provide said information and documents as soon as possible. Please inform me of all information, and send me a copy of all documents, regarding me that you submit to the United States Supreme Court.

Sincerely,

/s/ Michael T. Rose

MTR/jh

cc: Mr. Michael Rodak, Jr.

APPENDIX H

SUPREME COURT, STATE OF COLORADO

No. ————

MEMORANDUM IN SUPPORT OF
PETITION FOR RELIEF

(Filed July 2, 1985)

IN RE THE APPLICATION OF MICHAEL T. ROSE
FOR ADMISSION TO THE BAR OF THE STATE OF
COLORADO

MORRISON & FOERSTER
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ATTORNEYS FOR PETITIONER
MICHAEL T. ROSE

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION OF
COLORADO, INC.

(p. i) TABLE OF CONTENTS

TABLE OF AUTHORITIES ii
I. INTRODUCTION 1
II. STATEMENT OF FACTS 1
III SUMMARY OF ARGUMENT 1
IV. ARGUMENT 3
V. CONCLUSION 26

(p. ii) TABLE OF AUTHORITIES

Cases

Page(s)

Department of Air Force v. Rose, 425 U.S. 352 (1976) 27
In re Berkan, 648 F.2d 1386 (1st Cir. 1981) 3, 4
In re Childs, 101 Wis.2d 159, 303 N.W.2d 663 (1981) 4, 14
In re Dinan, 157 Conn. 67, 244 A.2d 608 (1968) 3, 14, 16
In re Guberman, 90 Ariz. 27, 363 P.2d 617 (1961) 14
In re Icardi, 436 Pa. 364, 260 A.2d 782 (1970) 14, 16, 17
In re Kellar, 81 Nev. 240, 401 P.2d 616 (1965) 4, 14
In re Levine, 97 Ariz. 88, 397 P.2d 205 (1964) 3, 14
In re Monaghan, 126 Vt. 53, 222 A.2d 665 (1966) 4, 8, 10, 14, 16

(p. iii) Page(s)

Cases

Mattox v. The Disciplinary Panel of the United States District Court for the District of Colorado, No. 83-2116, Slip Opin. (10th Cir. April 1, 1985) 3, 4, 5, 14, 17

Polk v. State Bar of Texas, 374 F.Supp. 784 (N.D. Tex. 1974) 26

Willner v. The Committee on Charter and Fitness, 373 U.S. 96 (1963) 3, 4, 5, 6, 10, 13, 14, 16, 17, 21. 22

(p. 1) Petitioner Michael T. Rose, through the American Civil Liberties Union Foundation of Colorado, Inc. and his attorneys, Morrison & Foerster, submits this Memorandum in Support of Petition for Relief ("Memorandum").

I. INTRODUCTION

Mr. Rose was denied procedural due process when his application for admission to the Colorado Bar was rejected in 1977. This rejection, and the findings upon which it was based, have caused and continue to cause Mr. Rose serious and irreparable injury to his personal and professional reputations. The relief which Mr. Rose seeks in his Petition for Relief ("Petition") is necessary to reverse or at least to mitigate these injuries.

II. STATEMENT OF FACTS

The Petition presents the relevant facts.

III. SUMMARY OF ARGUMENT

In violation of the Fifth and Fourteenth Amendments to the United States Constitution, Mr. Rose was never notified of the charges against him and upon which he was to be denied admission, until after his application was rejected; in fact, Mr. Rose was misled as to the nature of the charges; Mr. Rose was denied a full hearing at which he could rebut the charges against him; over one-half of the Committee members who voted (p. 2) to deny Mr. Rose admission failed to hear or to review all of the evidence,

including some or all of Mr. Rose's testimony; one Committee member who voted to deny Mr. Rose admission failed to hear or to review any testimony; the decision to deny Mr. Rose admission was based at least in part on *ex parte* statements and documents; neither the Committee nor this Honorable Court produced for confrontation and cross examination, or gave Mr. Rose the authority to produce, the authors of the *ex parte* statements and documents; Mr. Rose was denied the right to review, to confront and to rebut the contents of the *ex parte* statements and documents; and the late Justice James K. Groves, who was disqualified from voting on Mr. Rose's application, nevertheless urged this Honorable Court to deny Mr. Rose's admission.

Finally, certain rules and orders of confidentiality bar Mr. Rose from commenting fully on the rejection of his application. These rules and orders deny Mr. Rose his right to free speech guaranteed by the First and Fourteenth Amendments to the United States Constitution. They are also patently unfair because he is questioned constantly about the widely-publicized adverse actions of the Committee and this Honorable Court, which have not remained confidential.

* * *

(p. 24)

B. *Certain Rules And Orders Of Confidentiality Bar Mr. Rose From Commenting On The Rejection Of His Application, Even Though He Is Questioned Constantly About The Widely-Publicized Adverse Actions Of The Committee And Of This Honorable Court. These Rules and Orders Are Patently Unfair And Violate His Right To Free Speech.*

Certain rules and orders by this Court bar Mr. Rose from commenting on the Colorado proceedings. These

rules and orders, and the devastating impact they have had and continue to have on Mr. Rose, are discussed at length in the Petition and in Mr. Rose's Affidavit.[32]

Two points require emphasis. First, little, if anything, about the reasons for rejecting Mr. Rose's application remains confidential. What does remain confidential is the evidence favorable to Mr. Rose and the unfair manner in which he was treated. Despite the United States Supreme Court's written assurance of confidentiality, the allegations against Mr. Rose developed in Colorado were disseminated widely in Chief Justice Burger's public dissent. Also, Justice Groves provided to a United States Congressman "more (p. 25) [information about Mr. Rose] than we generally disclose without the permission of the applicant." Letter from Justice Groves to Congressman Charles H. Wilson (October 26, 1977).[33] Justice Groves did request the Congressman to "treat [the information] as rather privileged." *Id.*[34] Finally, Justice Groves kept a "mailing list," on which he placed Congressman Wilson and an unknown number of other persons, to whom he provided information about "the future of Mr. Rose." *Id.*[35]

Second, Mr. Rose is in an untenable position. This Court's rules and orders of confidentiality did not prevent information adverse to him from being disseminated. Nevertheless, these very same rules and orders prevent him from responding to inquiries resulting from the publi-

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[32]Appendix 8.

[33]Appendix 23.

[34]*Id.*

[35]*Id.*

cation of the damaging information. This is patently unfair, especially because these rules and orders of confidentiality exist to protect, rather than to harm, the applicant. In fact, Colo. R. Civ. P. 201.10(c) now provides that the hearing "shall be confidential unless the applicant shall request that the hearing be public." Indeed, Special Master Bunch's order of confidentiality was issued only at the request of Mr. Rose for (p. 26) his own protection. Affidavit of Jordon Hochstadt and Richard S. Strauss, ¶¶11-12.[36] It also is noteworthy that Special Master Bunch later disqualified himself. *Id.* at ¶ 13.

These rules and orders of confidentiality also deny Mr. Rose his right to free speech guaranteed by the First and Fourteenth Amendments to the United States Constitution. *Polk v. State Bar of Texas*, 374 F.Supp. 784, 787-88 (N.D. Tex. 1974).

V. CONCLUSION

Mr. Rose, a graduate of the United States Air Force Academy, has spent a considerable portion of his career attempting to redress legal infirmities in the adjudicatory systems of the military academies. He authored a controversial article for the *New York University Law Review* which questioned the administration of the academies' conduct, honor and ethics systems. Rose, Michael T., *A Prayer for Relief: The Constitutional Infirmities of the Military Academies' Conduct, Honor and Ethics Systems* (New York University School of Law 1973).

Articles about Mr. Rose have appeared in the *New York Times*, the *Washington Post* and other news publica-

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[36]Appendix 16.

tions; he has appeared on *Sixty Minutes* and on other television (p. 27) programs; and he has lectured at and participated in various university panel discussions where he has discussed his views. He was the successful party in a seminal Freedom of Information Act lawsuit against the Air Force. *Department of the Air Force v. Rose*, 425 U.S. 352 (1976).

Mr. Rose believes that the complaints from Air Force officials, which prompted the Colorado proceedings, resulted from his criticism of the academies. If Mr. Rose had been given due process before he was denied admission, he may have been able to prove this.

The circumstances surrounding the Colorado proceedings are an albatross around Mr. Rose's neck which continue to damage severely his personal ond professional reputations. Individuals who disagree with Mr. Rose continually challenge his credibility based upon the Colorado proceedings. For example, on March 16, 1985, Senator Barry Goldwater, a member of the Air Force Academy Board of Visitors, characterized Mr. Rose as one "who went to law school and who was not admitted to the Colorado Bar on his initial try. . . ." Affidavit of Robert C. Moore, ¶4 [hereinafter cited as "Moore Affidavit"].[37] Moreover, the Public Information Office at (p. 28) the United States Air Force Academy has disseminated information about the Colorado proceedings to media sources in a deliberate attempt to undermine Mr. Rose's credibility. *Id.* at ¶ 5.

In Mr. Rose's Affidavit,[38] he sets forth the ongoing damage to him from, and repeated attempts by individuals

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[37]Appendix 28.

[38]Appendix 8.

to discredit him based upon, the Colorado proceedings. These challenges to Mr. Rose's credibility detract from the substance of his arguments and make it virtually impossible for him to continue his work. Whether one agrees or disagrees with Mr. Rose's views, he is entitled to speak freely.

Mr. Rose has lost many vaiuable personal and professional friends and associations due to the widespread publication of the findings and conclusions of the Colorado proceedings. Due to the Colorado proceedings, Mr. Rose has had valuable job offers withdrawn; his applications to two other state bars are being held in abeyance pending the outcome of this Petition or until Mr. Rose attends hearings to explain the Colorado proceedings; and Justice Burger's publicized statements about the Colorado proceedings have been requoted in legal briefs to undermine Mr. Rose's credibility in unrelated legal proceedings.

(p. 29) In sum, as long as the adverse Colorado findings about Mr. Rose stand, he cannot freely practice law, engage in business transactions, apply for a job, enter politics, retain or obtain support and friendships from individuals afraid of the stigma of being associated with him, and make meaningful public statements.

The proceedings which resulted in Mr. Rose being denied admission to the Colorado Bar were fraught with due process inadequacies. By granting Mr. Rose the requested relief an injustice will be partially rectified and Mr. Rose can proceed with his life and his work.

PETITIONER REQUESTS ORAL ARGUMENT.

July 2nd, 1985.

Respectfully submitted,

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COLORADO, INC.

Supreme Court, U.S.
FILED
MAR 18 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1188

IN THE

Supreme Court of the United States

October Term, 1985

MICHAEL THOMAS ROSE,

Petitioner,

v.

THE SUPREME COURT OF THE STATE OF COLORADO,

Respondent.

REPLY BRIEF

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TABLE OF CONTENTS

	Page
Table of Authorities	(ii)
Argument.....	1

TABLE OF AUTHORITIES

Cases	Page
Department of the Air Force v. Rose, 425 U.S. 352 (1976)..	13
District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983).....	8, 9
Statutes	
28 U.S.C.§ 1257.....	8
Colo. R. Civ. P. 216.....	6, 16

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

No. 85-1188

MICHAEL T. ROSE,

Petitioner,

v.

THE SUPREME COURT OF THE STATE OF COLORADO,

Respondent.

REPLY BRIEF

The Petition for Writ of Certiorari in this case showed that Petitioner's application for admission to the Colorado State Bar had been denied after proceedings that egregiously failed to provide him with due process; that despite his later admission to the Colorado Bar the consequences of the

earlier denial continue to cause him serious harm -- including the publication by the Chief Justice of this Court of damaging remarks about his character; and that he is prevented from responding effectively to the assertions made against him by a prior restraint Order of the Colorado Supreme Court that forbids him from discussing publicly the circumstances surrounding his rejection and later admission to the State Bar.

Respondent's Opposition does not dispute these facts, but urges that the Petition be denied on several procedural grounds, none of which have merit.

Respondent first argues that the petition should be denied as jurisdictionally out of time. Respondent wholly ignores the fact that Rose's Petition for Writ of Certiorari was submitted well within ninety days after the Colorado Supreme Court denied his Petition for

Relief. Instead, Respondent rather wistfully states that the Petitioner is not really seeking to have that decision reviewed at all. According to the Respondent, what the Petitioner actually wants reviewed is the Colorado Supreme Court's 1977 denial of his admission to the bar and the 1982 letter to Rose from the Clerk of the Colorado Supreme Court in which the Clerk reported that the Colorado Court refused to rescind its rules and orders of confidentiality (Opposition at 7). The simple answer is that Petitioner is seeking review only of the Order to which his Petition is addressed. The Colorado Supreme Court did not dismiss but denied his 1985 Petition for Relief, thus indicating that it had considered that Petition on its merits. (Petitioner's Appendix A). Those merits are therefore properly before this Court for review.

Respondent misconstrues the harm which Rose suffers and the remedy he seeks. It is true, as Respondent contends, that Rose raised due process arguments in 1977 in his Amended Petition for Admission (Opposition at 9). At that time, however, the sole harm Rose sought to allay was the State's 1977 refusal to permit him to practice law. Rather than appeal that refusal, as Respondent in hindsight argues Rose should have done, Rose instead simply reapplied to the Bar. As events demonstrated, that was the simplest and most direct way for Rose to be allowed to practice law -- it was the remedy that most effectively addressed the harm Rose suffered at the time. Obvicusly, Rose could not have then foreseen the harm he would suffer years later from the publication of confidential and misleading information by this Court, or from the secret circulation by Justice Groves

of confidential documents. It was not until well after 1977 that Rose even learned that Justice Groves was distributing such material. In 1977, Rose could only assume that he was protected from such harm by the rules and orders of confidentiality which governed Colorado bar admission proceedings. Even when Rose consented to have certain information forwarded to this Court, he did so relying on this Court's express assurance that the information would be kept confidential. Rose reasonably expected this Court to honor that assurance. Thus, in 1977, when Rose asserted that he was denied admission to the Colorado Bar without due process, he was aware of neither the extent of those violations nor the dimension of the harm he would suffer from them. His arguments in 1977 did not address or anticipate that harm. His 1985 Petition for Relief was the first time he raised or was

able to raise due process concerns to address those new injuries. It is undisputed that Rose's Petition for Writ of Certiorari was submitted to this Court within ninety days after the Colorado Supreme Court denied the Petition for Relief. Rose's Petition is therefore timely.

Respondent also takes Rose to task for failing to raise First Amendment issues in his 1982 Motion to Withdraw the Rules and Orders of Confidentiality (Opposition at 10). Rose raised no First Amendment arguments at that time because none applied. It is important to note that former Colo. R. Civ. P. 216, which governed Colorado Bar admissions proceedings at that time, provided that certain information shall be held confidential by "the Committee and the Court" (emphasis added). It did not, by its terms, restrict Rose in any way. To the

contrary, Rose voluntarily placed himself under its restrictions when he requested, in 1980, that the admissions proceedings remain confidential. In effect, by submitting to that rule, Rose waived his First Amendment right of free speech on condition that the entire proceedings remain confidential. This waiver received judicial imprimatur under the Special Master's Order (Petitioner's Appendix F at 30A). When this Court breached that condition of confidentiality, Rose sought, by way of his Motion to Withdraw the Rules and Orders of Confidentiality, to withdraw that waiver. It was only when the Colorado Supreme Court denied Rose's request to withdraw the rules and orders of confidentiality that Rose's waiver ceased to be voluntary, and that Rose's First Amendment rights began to be violated.

Respondent insinuates in its Summary of Argument (but never argues)

that Rose should have directly appealed the letter from the Colorado Supreme Court Clerk (Petitioner's Appendix B) which informed Rose that that Court would not rescind the Special Master's Order. Because he failed to do so, the Respondent implies, Rose's petition should be denied (Opposition at 7). The argument is absurd. This Court sits to review the final judgments, on questions of federal law, of the highest state courts in which decisions may be had, not the correspondence of court clerks. See 28 U.S.C. § 1257.

Respondent disingenuously cites District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 483-5, n.16 (1983), to support its flawed contention that Rose's "failure to raise his constitutional arguments when he first submitted his underlying claims to the state court should preclude this court from now

considering such claims." (Opposition at 10). The very same footnote to which the Respondent refers contains the following language:

> . . . One of the policies underlying the requirement that constitutional claims be raised in state court as a predicate to our certiorari jurisdiction is the desirability of giving the state court the first opportunity to consider a state statute or rule in light of Federal constitutional arguments. A state court may give the statute a saving construction in response to those arguments. [citations omitted]
>
> . . . It is important to note . . . the strength of the state interest in regulating the state bar. As we stated in Goldfarb v. Virginia State Bar, 421 U.S. 773, 95 S.Ct. 2004, "The interest of the states in regulating lawyers is especially great since lawyers are essential to the primary governmental function of administering justice, and have historically been 'officers of the courts'. [citation omitted] [emphasis added]

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 483-5, n.16 (1983). Clearly, then, the footnote upon which

Respondent so heavily relies actually stands for the proposition that, especially in cases involving bar admissions issues, this Court will not review claims that the state court has not had an opportunity to review first. The explanation for this is simple: States have a great interest in regulating their own bars. To argue from this footnote that Rose should have sought review in this Court rather than relief in state court penalizes Rose for litigating in state court what is of State interest and turns the logic of this footnote inside-out. Only now has the Colorado Supreme Court had ample opportunity to review these claims. Only now are these issues ripe for review by this Court.

Respondent's second procedural argument is that no special or important reasons exist for granting Rose's Petition. Although Respondent admits that

Rose's right of free speech is to this day subject to the prior restraint of the Special Master's Order (Opposition at 13), Respondent apparently dismisses this right as one too trivial to concern this Court.

Respondent first contends that "the circumstances surrounding [Rose's] first application for admission and denial thereof are of interest only to the original parties, Mr. Rose and the Colorado Supreme Court." (Opposition at 12). In this, and in Respondent's contention that Rose's subsequent admission to the Colorado Bar cleared his name with respect to the first denial, the Respondent blithely forgets the Chief Justice's dissent or the attention that dissent merited in the New York Times, The Washington Post, the Denver Post, The National Law Journal, and the Colorado Springs Sun. All of this occurred after Rose was admitted to the Colorado Bar. Clearly, when

the Chief Justice wrote his dissent (in which Justice O'Connor concurred), he was interested in the circumstances surrounding Rose's first application for admission, and he was not persuaded that Rose's name had been cleared by his eventual admission to the Bar of Colorado. Clearly, too, the Bar Committees of two states are interested in the matter or they would not be stalling Rose's application because of it (Petitioner's Appendix F at 131a). Finally, lawyers who oppose Rose are sufficiently interested in the matter to take the trouble to cite and quote the Chief Justice's dissent in virtually every case in which Rose is involved. As the Chief Justice has acknowledged, society's interest in allegations of wrongdoing is longlasting:

> "The opinions of this Court have long recognized the opprobrium which . . . our society attribute[s] to allegations of dishonor among commissioned

> officers of our Armed Forces. The stigma which our society imposes on the individual who has accepted such a position of trust and abused it is not erasable, in any realistic sense, by the passage of time or even by subsequent exemplary conduct . . ."

Department of the Air Force v. Rose, 425 U.S. 352, 383-4 (1976) (citations omitted) (emphasis added). In view of all this, Respondent's contention that the matter is of "interest only to the original parties" is plainly wrong.

As to Rose's claims of due process violations, Respondent argues that the Colorado Supreme Court properly refused to grant his Petition for Relief "given (1) the fact that in his second application for admission . . . Rose admitted the validity of the factual findings and the impropriety of actions on which the denial of his first application was based, (Respondent's Appendix E at pp. 30b, 32b, and 33b); and (2) the fact

that Rose specifically asserted the defense of res judicata in the second round of admission proceedings with respect to factual determinations made in the first." (Opposition at 13).

One may search Respondent's Appendix E for the admission the Respondent alleges exists. That admission is not to be found. Rather, in his pro se Amended Petition for Admission (Respondent's Appendix E), one finds six paragraphs devoted to recapitulating Petitioner's 1977 Due Process Argument (pp. 28b-29b), and an assertion that the Bar Committee's findings "no longer are valid" because (a) their conclusion that "'the inclinations evidenced by the applicant's conduct are likely to be carried over by the applicant in the practice of law' has proved not to be true"; (b) the Minnesota Bar Committee, after investigating the circumstances of the denial of Rose's admission

to the Colorado Bar, still admitted him to that State's Bar; (c) Rose never knowingly misrepresented his professional status; (d) Rose's suspension from the State of Pennsylvania's Bar was a purely bureaucratic error which in no way reflected on Rose's ethical qualifications; (e) Rose's alleged "lack of candor" resulted from inexperience and poor judgment rather than dishonesty and lack of integrity; and, finally, (f) Rose is, despite the Bar Committee's findings, a member in good standing of seven different Bars (Respondent's Appendix E at 30b-32b). Given its context, Rose's contention that the Bar Committee's findings "no longer are valid" is a far cry from being an admission that they ever were valid, factually or otherwise. In addition, Rose's assertion that the first admissions proceedings are res judicata on the second

hardly amounts to a waiver of his due process rights.

Respondent argues that no "special or important reasons exist for the granting of certiorari to review Rose's claims relating to the rules and orders of confidentiality," (Opposition at 13) because, as Respondent reasons, Rose's complaint is actually with former Colo. R. Civ. P. 216. That simply is not so. Former Rule 216 compelled only the Committee and the Court to hold information confidential; it did not restrict the applicant. By its terms, then, that Rule never applied to Rose; it was only through the Special Master's Order that Rose was compelled to obey that Rule. Consequently, the State's rationalization of Former Rule 216 is wholly irrelevant. Rose is restrained only by the Special Master's Order and the Colorado Supreme Court's refusal to rescind that Order.

Respondent does not -- and cannot -- justify these.

Of all Respondent's contentions, the most illogical is that, "as a practical matter," Rose has already been provided by the Colorado Supreme Court with the ability to respond to the allegations in the Chief Justice's dissent. While it is true, as Respondent contends, that Rose has been relieved of the restrictions concerning the material which was sent to this Court, it is also true that the Colorado Supreme Court only sent this Court material which was critical of Rose. In effect, the Colorado Supreme Court has merely allowed Rose to base his response to the Chief Justice's dissent on the same material which damned him in the eyes of the Chief Justice. He is affirmatively prohibited from relying on any of the favorable material that the Colorado Supreme Court chose not to send to this

Court. This is analogous to permitting John the Baptist to prepare a defense based only on Salome's affidavit.

At no stage of any of the State proceedings has Rose been permitted to offer evidence in his own support or to rebut evidence offered against him. Even after the proceedings, Rose has had to suffer, in silence, the consequences of their adverse findings. Aside from being unfair, the actions of the Colorado Supreme Court are unconstitutional. By granting certiorari, this Court can alleviate Rose's injury and remedy a constitutional wrong.

Respectfully submitted,

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